

**DOCKET NO.: CV-14-6025333-S** : **COMPLEX DOCKET**  
**ROBIN SHERWOOD and** : **J.D. OF WATERBURY**  
**GREG HOELSCHER** : **AT WATERBURY**  
**V.** :  
**STAMFORD HEALTH SYSTEM, INC.** : **September 30, 2016**  
**D/B/A STAMFORD HOSPITAL** :

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Practice Book § 17-44 through 17-49, defendant, Stamford Health System, Inc., d/b/a Stamford Hospital (hereinafter referred to as "the Hospital"), moves for summary judgment concerning the sole claim in the operative Amended Complaint and the ten new claims alleged in the proposed Amended Complaint.

As more fully set forth in the accompanying memorandum of law, all of the existing and potential claims are barred by the applicable statute of limitations. The ten new claims are barred by the exclusivity provision in Connecticut's Product Liability Act. Finally, Stamford Hospital is not a "product seller" with respect to medical devices it did not manufacture and which were implanted during surgery.

**DEFENDANT,**

**STAMFORD HEALTH SYSTEM, INC.,  
D/B/A STAMFORD HOSPITAL**

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**CERTIFICATION**

THIS IS TO CERTIFY THAT a copy of the foregoing Motion for Summary Judgment  
was emailed, this 30th day of September, 2016, to the following counsel of record:

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Stamford Health System, Inc. d/b/a Stamford Hospital (hereafter “Stamford Hospital”), respectfully submits this Memorandum of Law in Support of its Motion for Summary Judgment.

**PRELIMINARY STATEMENT**

Dispositive motions are routinely granted where a plaintiff’s lawsuit is not timely filed within the statute of limitations.<sup>1</sup> Plaintiffs Robin Sherwood and Gregory Hoelscher (collectively the “plaintiff”) allege that Stamford Hospital violated Connecticut’s Product Liability Act, Conn. Gen. Stat. § 52-572m et. seq. (the “CPLA”) when it provided Ms. Sherwood’s surgeon, Dr. Brian Hines, with an Ethicon Anterior Prolift device for implantation into Ms. Sherwood during her surgery in Stamford Hospital’s operating room. The surgery took place on **April 12, 2006** (ten and a half years ago). This Summons and Complaint are dated **August 23, 2014**, more than eight years later. Pursuant to Conn. Gen. Stat. § 52-572a(a), the CPLA has a three year statute of limitations from the date the injury “is first sustained or discovered or in the exercise of reasonable care could have been discovered.” By the end of 2006 or no later than 2008, Ms. Sherwood knew she had problems with the implanted Ethicon Prolift. This case was commenced at least three years after the statute of limitations expired.

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<sup>1</sup> “Summary judgment may be granted where the claim is barred by the statute of limitations . . . Summary judgment is appropriate on statute of limitations grounds when the ‘material facts concerning the statute of limitations [are] not in dispute.’” (Citation omitted.) Rompney v. Safeco Ins. Co. of Am., 310 Conn. 304, 313 (2013).

Plaintiff recently filed a request to amend the operative complaint and add ten new claims for negligence, breach of express warranty, breach of implied warranty, recklessness, civil conspiracy, lack of informed consent, innocent misrepresentation (a claim which does not exist), negligent misrepresentation, intentional misrepresentation, and CUTPA. Assuming these claim relate back to the August 23, 2014 Complaint, they were also filed at least four years after the longest statute of limitations for any of these claims. All of these claims are also barred by the exclusivity provision in the CPLA, which precludes claims for product liability injuries where the plaintiff has asserted a product liability claim. Here, Counts Two through Eleven consist almost entirely of and incorporate the CPLA claim (Count One).

Finally, as a matter of law, in Connecticut and all fifty states, a hospital is not a product seller for medical devices the hospital did not manufacture and which were used during surgery.<sup>2</sup> The Restatement memorializes this unity of opinion. See Restatement (Third) of Torts: Products Liability § 20, cmt. d (“[I]n a strong majority of jurisdictions, hospitals are held not to be sellers of products they supply in connection with the provision of medical care, regardless of the circumstances.”). See also, Zbras v. St. Vincent's Med. Ctr., 91 Conn. App. 289, 880 A.2d 999, 1002 (Conn. App. 2005). For all of these reasons, summary judgment is required on all claims.

### **STATEMENT OF FACTS**

Ms. Sherwood has a B.S. degree in microbiology and a second B.S. degree in medical technology. P. 45 (Sherwood Depo.), Exhibit 1, Allentuch Declaration. Before she had children, Ms. Sherwood worked in pathology labs doing microbiology at St. Johns Hospital, Hill Crest Hospital and Sloan-Kettering Hospital. Id. at pp. 48-50.

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<sup>2</sup> While counsel had previously stated in the Farrell case that in certain circumstances a hospital in Louisiana could be liable for the use of defective product, those circumstances do not apply here. Tantillo v. Cordis Corp., 2004 U.S. Dist. LEXIS 19615, \*6 (E.D. La. Sept. 28, 2004) “[T]he LPLA does not provide a cause of action against ‘sellers,’ but only against manufacturers.”)



In 1998, when she was pregnant with her fourth child, Logan, Ms. Sherwood first started experiencing symptoms from a prolapsed uterus. Id. at pp. 56-67. Those symptoms continued, with some interruption, and Ms. Sherwood used a pessary to treat the symptoms from her prolapse. Id. at 58. By 2006, the pessary was not “satisfactory” to Ms. Sherwood because she was having a series of problems with the pessary. Id. at 69. Ms. Sherwood consulted with Dr. Komarynsky, her gynecologist, and Dr. Grey, another gynecologist about treatment options. Id. at 71-72. The prolapse was “disgusting” to Ms. Sherwood. Id. at 75. At approximately the end of 2005, Dr. Komarynsky recommended that Ms. Sherwood see Dr. Hines for treatment of her prolapse. Id. at p. 79. Ms. Sherwood testified that at her January, 2006 visit, Dr. Hines “presented me that the only option for me was mesh. And that it had wonderful results in people.” Id. at 81. Ms. Sherwood tried to do further research about the Ethicon Prolift. She searched the term “Ethicon Prolift” on Google but all she found was the brochure Dr. Hines gave her. Id. at 85.

At the time of her surgery, Ms. Sherwood suffered from pelvic organ prolapse, stress urinary incontinence and mild urinary urgency. Her cervix extended 3cm-4cm beyond the entrance to her vagina, among other issues described in her medical record. See Exhibit 2, Allentuch Declaration. On April 12, 2006, Dr. Hines implanted an Ethicon Prolift into Ms. Sherwood at Stamford Hospital to treat her prolapse. Pp. 69, 114 (Sherwood Depo.), Exhibit 1, Allentuch Declaration. Ms. Sherwood agreed that there was no store at Stamford Hospital selling Ethicon Prolifts. Id. at 165. Stamford Hospital purchased or obtained the Prolift from Ethicon for the surgery. Id. at 166. Ms. Sherwood summarized the things Stamford Hospital did wrong in this case as follows:

Q. The things the hospital did wrong were sold you the -- sorry, obtained the product, it billed your insurance, and if there

was some kind of physician review board or quality control department that knew about problems with the Prolift, you should have been told that before the surgery?

A Or after.

Id. at 170. She then confirmed that the foregoing were “wrong.” Id. at 171.

Ms. Sherwood responded to and agreed with the following summary of the things she believes Dr. Hines did wrong in advance of her Ethicon Prolift surgery:

Q. Okay. All right. So the things that -- things he did wrong in that January 2006 meeting, was he didn't tell you that your vagina could be shortened, hardened, you could have a foreign body reaction, that you could -- the mesh could contract, that the tools that he would use in surgery would go through nerves and could create long-lasting pain, that the mesh was not FDA approved, and that it was relatively -- that it was new and a new treatment for women for pelvic organ prolapse. Are those the things he did wrong?

MS. FUSCO: Objection. You can answer. You can answer if you can.

THE WITNESS: Yes, he didn't tell me that my bowel could be perforated. I would say in summary he did not describe the surgery as a dangerous surgery, but more portrayed it as a simple outpatient procedure.

Id. at 92. When asked whether Dr. Hines knew about those problems before her surgery, Ms.

Sherwood testified: “I don’t know what he thought. I don’t know what he knew.” Id. at 100.

Ms. Sherwood went back to see Dr. Hines on April 12, 2007 complaining of dyspareunia (painful sex). See Exhibit 2, Allentuch Declaration. Ms. Sherwood testified: “when I went back to Dr. Hines with complaints, you know, as they were beginning to happen, I did not get from him an acknowledgment that my mesh was shrinking or changing the shape of my body. And he also told me that it was very unusual and he hadn't heard of it before.” P. 113 (Sherwood Depo.),

Exhibit 1, Allentuch Declaration. At this point (April, 2007), it appears that Ms. Sherwood knew that the Ethicon Prolift was not functioning properly.

In fact, Ms. Sherwood started having problems with the Ethicon Prolift as early as October/November of 2006. Even at that early date, she was concerned about the medical problems she faced as a result of the Ethicon Prolift. She testified:

. . . So I feel like six or seven months after the surgery when I already thought I'm, you know, back in the game, that started happening.

Q All right. So now we're somewhere in the October, November time frame roughly of 2006.

A Uh-huh.

Q Did you have any other problems or symptoms post surgery related to the Prolift going forward?

A Okay. So at about that time, like towards the end of the year of 2006, I noticed that, you know, for me, sex was becoming a little uncomfortable. It felt like, you know, there was no flexibility. And if it lasted very long, it was becoming painful. I felt like things were pulling inside of me. So, you know, I'm pretty sure I went to the doctor about that. And he did not give me a solution.

Id. at pp. 116-117. Ms. Sherwood also talked to her gynecologist, Dr. Komarynsky, about her dyspareunia. "Well, I just told her what was happening. And she examined me and it seems like I can feel the arm of the mesh more so on the right side." Id. at 118.

Dr. Hines removed sutures from the Ethicon Prolift in 2007. Ms. Sherwood testified:

Q Did Dr. Hines do any surgery on you in 2007?

A Yes, he did.

Q Okay. Was that to deal with the painful sex?

A No. It was to deal with some plastic sutures that had popped through my vaginal epithelium.

Q So were you having other symptoms besides painful sex associated with the Prolift surgery in 2007?

A Well, the sutures that came out, and Dr. Komarynsky said, I think you need to take these out. I saw Dr. Hines and he said no. And then later on when I went back to her she said they have to come out. And then he agreed to take them out. . . .

Q So you had no symptoms but Dr. Komarynsky suggested that these stitches were a problem during her exam of you; is that right?

A No. I did have symptoms and I was relating all of them to her, and so she was inferring that -- not inferring, saying that this mesh, it's changing in your body.

Q . . . You were seeing Dr. Komarynsky in 2007 and you had additional symptoms related to the stitches since you also observed them, **and you also told her that the mesh was changing in your body and that this was a problem?**

A **She told me on exam she could tell from one time to the next that things were changing inside. I was going -- pulled -- my architecture was being pulled more to the right.** And I also had -- I'm sure that's in everybody's records. **I had a place in the anterior section of my vagina that was not smooth anymore.** It had the texture of like a screen door, even though it was, like, flesh covered. It was very rough and it didn't seem like -- it didn't seem like me.

Q **Is this something else that you found yourself in 2007 that you were -- that you had this texture in your vagina?**

A **Yes.** It was a place of irritation. I did a self-check and my husband started saying I don't know what's going on, but it's like scratchy. And that was sort of before and at the same time, you know, the plastic sutures just really popped out there.

Q And Dr. Hines removed the sutures in about August of 2007.

A Uh-huh.

Q Is that right?

A Yes.

(Emphasis added). Id. at 125-128.

For Ms. Sherwood, the period preceding her first revision surgery (August, 2007) was very scary. She feared for her life. Ms. Sherwood testified:

Q Did you discuss treatment options with him? In other words something other than just taking them out? And "him" is Dr. Hines.

A I wasn't asking him the questions. I was asking him what do I do. You know, I was in the -- pretty like what's happening? Am I going to die? What's happening to my organs?

Q You were really scared?

A I was really scared. I put my will in order.

Id. at 129-130. She later described it as a "holy cow moment." Id. at 130.

Shortly after the August, 2007 surgery, Ms. Sherwood elected to treat with physicians other than Dr. Hines because "the mesh was causing me [her] problems." Id. at 132. In response to a question asking why Ms. Sherwood went "back to see him [Dr. Hines]," She answered: "[t]o talk to him and tell him that I was pretty sure, not just as the person who received the mesh, **that the mesh was causing me the problems. And that I needed to do something about it.** And he emphasized that it is permanent. And I said, well, then I need to -- I need to see someone else. So he gave me some names of people to go see. And he said I'm sorry that you're having problems." Id. at 132. That December, 2007 office visit was the last time Dr. Hines treated Ms. Sherwood. "Q And that was the last time you saw Dr. Hines; is that right? A Yes. Q That was in December of 2007, approximately? A That sounds right." Id. at 134.

At the end of 2007 and beginning of 2008, Ms. Sherwood was discussing her condition with her gynecologist, Dr. Komarynsky. She summarized the medical advice she received in those discussions as follows: "I have concerns that this is not going well for you. You have to

find somebody who knows something about it. And somebody who has already done this, has already taken it [the Ethicon Prolift] out successfully.” Id. at 135. Ms. Sherwood went for a consult with Dr. Staskin in January, 2008 about how to deal with the problems she had with the Ethicon Prolift. Id. at 136. She was “[s]till in terrible [pelvic] pain.” Id. She “still had tension, pulling, just feeling that, like, everything was twisting inside of me. I had a 24-hour awareness that -- I think I knew just where the mesh was in terms of I can trace the pain.” Id. at 137.

At her January, 2008 consult with Dr. Staskin, she communicated her problems with the Ethicon Prolift to Dr. Staskin:

Q And it was in the wrong place and that was causing pain; is that what you felt?

A The arms of the mesh on both sides had gotten -- I guess they shrunk. They became hard.

Q And that's what you told Dr. Staskin when you met with him in January or so of 2008; is that right?

A Yes.

Q You told him that the mesh shrunk and become [became] hard and felt out of place; is that right?

A Yes.

Id. at pp. 137-138. Ms. Sherwood knew that “[i]t was not supposed to be like that.” Id. at 138. Dr. Staskin told Ms. Sherwood that “the arms of your mesh are too tight and they need to be released.” Id. at p. 140.

In 2008, Ms. Sherwood also consulted with Dr. Porges. He was the head of urogynecology at NYU Hospital. Id. at pp. 141-142. Dr. Porges told Ms. Sherwood that her mesh “need[ed] to come out.” Id. at p. 143, 145. At approximately the same time, Ms. Sherwood sought an opinion from Dr. Gee, a urogynecologist in Hartford, Connecticut, regarding her problems with the Ethicon Prolift. Id. at 147. In approximately June, 2008, Ms.

Sherwood met with Dr. Surrells, a urogynecologist in Norwalk, Connecticut, who “wanted to take out the mesh.” Id. at 154. When asked whether Dr. Surrells told Ms. Sherwood “why he wanted to take out the Prolift,” Ms. Sherwood testified: “[n]ot in medical terms, just because it was getting -- it was shrinking. And causing me problems. By this time, I had a complaint that I felt like my vagina was shortening.” Id. at 155. She also consulted with Dr. Bercik who recommended that she have surgery to either release or remove the Prolift. Id. at 160. That consult occurred in March, 2008. Id. at 161. All of these physician visits took place between January and June, 2008.

Regarding all of these consults, Ms. Sherwood testified that “all of the doctors were telling” her that she “needed to take the Prolift out.” Id. at 156. Ms. Sherwood was very upset by these consults with Dr. Staskin, Dr. Porges and Dr. Bercik. She testified: I was sort of in a state of like what am I going to do, what am I going to do. The sky is falling.” Id. at p. 146. Ms. Sherwood was experiencing significant symptoms because of problems with the Ethicon Prolift in 2008. She testified as follows:

Q. All right. So other than the symptoms you just described, the yeast infections, the spot on your side of your vagina and top that was textured and painful, the tightness, the shortened vagina, the bone pain, the pain in your groin, the pain down your right leg and the activities making it worse, were there any other symptoms that you were experiencing because of the prolift (sic) in 2008?

A I think I covered them.

Id. at 163-164.

Ms. Sherwood finally had the Prolift surgically removed by Dr. Schlomo Raz in February, 2011. Id. at 19, 181, 184. She testified:

Q. All right. So in November -- just so I understand this, November 2010 you met with him, he diagnosed your problems,

recommended some tests and you scheduled the surgery; is that right?

A Yeah. He gave me great confidence.

Q And the surgery we're talking about is the complete removal of the Prolift, the Ethicon Prolift; is that right?

A Yes.

Id. at 181.

Ms. Sherwood sued Ethicon in West Virginia federal court. Id. at 194. The summons in this case was signed on August 13, 2014. Ms. Sherwood described her decision to commence this action against Stamford Hospital as follows:

Q All right. Was it -- I know Attorney Fusco suggested it was sometime shortly before the complaint was filed. I didn't hear that testimony from you before, but is that -- is that the timing?

A I believe that I talked to Attorney Wells sometime in June of 2014 and he inquired about my health and that he wondered -- he knew about a case and they were talking about it somewhere and he knew me, and he said, would you be willing to be a witness. And I agreed to that. So maybe I came in July 2014. I'm not sure. I could have come in June, so I'm very much guessing. But it was after the surgery in 2014 that he and I talked about me being a witness.

Q All right. Did he tell you that you had a potential claim against Stamford Hospital?

A I think I might have asked him because I was surprised when I was listening to the briefing about what this claim was to say, you know, did I make the right claim.

Q All right. So did you ask him if you had a potential claim against Stamford Hospital?

A That's my best recollection.

Q And what did he tell you?

A I think he made a call and got back to me later.



Q And what did he tell you when he got back to you?

A I think he told me that I did.

Q And that was sometime in the summer of 2014?

A To my best recollection.

Id. at 199-200.

## ARGUMENT

### I. Plaintiff's CPLA Claim Is Barred By the Statute of Limitations<sup>3</sup>

The three year statute of limitations on Ms. Sherwood's CPLA claim began to run in the fall of 2006 but certainly no later than June of 2008 and therefore expired in 2011, not less than three years before this action was filed in 2014.<sup>4</sup> Product liability actions under Conn. Gen. Stat. § 52-572m are governed by the statute of limitations contained in Conn. Gen. Stat. § 52-577a(a). Section 52-577a(a) provides in relevant part: "No product liability claim, as defined in section 52-572m, shall be brought but within **three years from the date when the injury, death or**

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<sup>3</sup> The Plaintiff bears the burden of demonstrating that a provision tolling the statute of limitations applies. However, there are no applicable tolling doctrines in this case. The only possibly relevant tolling doctrines, fraudulent concealment and continuing course of conduct, do not apply because, as explained below, there is no genuine issue of material fact that the Plaintiff knew she had actionable harm in 2006 and 2007. See, e.g., Mountindale Condo. Ass'n, Inc. v. Zappone, 59 Conn. App. 311, 319-322, 332 (determining fraudulent concealment and continuing course of conduct tolling doctrine is irrelevant when there is no genuine issue of material fact that plaintiff actually knew of actionable harm during statute of limitations period); see also, Wojtkiewicz v. Middlesex Hosp., 141 Conn. App. 282, 287 (2013) (continuing course of conduct tolling doctrine does not apply when plaintiff has already discovered injury).

<sup>4</sup> When the legislature created statutes of limitation like the CPLA's three year statute of limitations, it decided that no matter the potential prejudice to a plaintiff, cases filed after the statute expired should be dismissed. "The purposes of statutes of limitation include finality, repose and avoidance of stale claims and stale evidence . . . These statutes represent a legislative judgment about the balance of equities in a situation involving a tardy assertion of otherwise valid rights: [t]he theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." Ziolkowski v. Town of Waterford, 2015 Conn. Super. LEXIS 2771, at \*27 (Super. Ct. Oct. 20, 2015) (quoting Flannery v. Singer Asset Finance Co., LLC, 312 Conn. 286, 322-23 (2014)). It is well settled that "[s]ummary judgment may be granted where the claim is barred by the statute of limitations . . . Summary judgment is appropriate on statute of limitations grounds when the 'material facts concerning the statute of limitations [are] not in dispute.'" (Citation omitted.) Rompney v. Safeco Ins. Co. of Am., 310 Conn. 304, 313 (2013). "[I]n the context of a motion for summary judgment based on a statute of limitations special defense, a defendant typically meets its initial burden of showing the absence of a genuine issue of material fact by demonstrating that the action had commenced outside of the statutory limitation period . . . When the plaintiff asserts that the limitations period has been tolled by an equitable exception to the statute of limitations, the burden normally shifts to the plaintiff to establish a disputed issue of material fact in avoidance of the statute." Id. at 321.

**property damage is first sustained or discovered or in the exercise of reasonable care should have been discovered.”** (Emphasis added).

Ms. Sherwood started having problems with the implanted Ethicon Prolift in the fall of 2006. She testified: “so at about that time, like towards the end of the year of 2006, I noticed that, you know, for me, sex was becoming a little uncomfortable. It felt like, you know, there was no flexibility. And if it lasted very long, it was becoming painful. I felt like things were pulling inside of me.” Pp. 116-117 (Sherwood Depo.), Exhibit 1, Allentuch Declaration. As discussed in the Statement of Facts, in the ensuing eighteen months, she consulted more than a half dozen urogynecologists, and each one of these physicians told her to have surgery to alter or remove the Ethicon Prolift. These consultations culminated in a February, 2011 surgery by Dr. Schlomo Raz to remove the Ethicon Prolift. The summons in this case is dated August 13, 2014.

Ms. Sherwood knew about her injury in the fall of 2006 and that constitutes actionable harm sufficient to start the three year statute of limitations contained in Conn. Gen. Stat. § 52-577a(a). Our Supreme Court held that “the [statutory] term ‘injury’ is synonymous with ‘legal injury’ or actionable harm.” See Lagassey v. State, 268 Conn. 723, 748 (2004). “‘Actionable harm’ occurs when the plaintiff discovers, or in the exercise of reasonable care, should have discovered the essential elements of a cause of action.” Tarnowsky v. Socci, 271 Conn. 284, 288 (2004) (citing Catz v. Rubenstein, 201 Conn. 39, 44 (1986)).<sup>5</sup> In other words, in product liability cases, a plaintiff sustains actionable harm under § 52-577a(a) when the plaintiff is aware or reasonably should have been aware of a possible causal nexus between her injuries and the offending product. See Peerless Ins. Co. v. Tucciarone, 48 Conn. App. 160, 167 (1998); see

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<sup>5</sup> Some of the cited cases herein analyze actionable harm under the statute of limitations contained in Conn. Gen. Stat. § 52-584. As the Appellate Court has stated though, “there is no relevant distinction, except for a difference in the stated limitation periods, between the discovery language contained in §§ 52-577a and 52-584.” Tarnowsky v. Socci, 75 Conn. App. 560, 569 (2003), *aff’d*, 271 Conn. 284 (2004). Thus, cases analyzing actionable harm for statute of limitations purposes under section 52-584 apply to CPLA cases as well as medical malpractice cases. Id.

also Lagassey, 268 Conn. at 749 (actionable harm occurs when “the plaintiff has knowledge of facts that would put a reasonable person on notice of the nature and extent of an injury.”). “The harm need not have reached its fullest manifestation before the statute begins to run.” Burns v. Hartford Hospital, 192 Conn. 451, 460 (1984). In determining when actionable harm has occurred, “[t]he focus is on the plaintiff’s knowledge of the facts, **rather than on discovery of applicable legal theories.**” (Emphasis added). Catz, 201 Conn. at 47.

The Second Circuit Court of Appeals decision in Gnazzo v. G.D. Searle Co., 973 F.2d 136 (2d Cir. 1992) illustrates this analysis. In Gnazzo, an intrauterine device (IUD) was inserted in plaintiff in 1974. Id. at 137. She had a series of complications in the following years until the device was removed in 1977. Id. In 1989, she was informed by a fertility specialist that she was infertile because of complications from her prior IUD use. Id. In a questionnaire that she filled out at the request of her attorneys, the plaintiff stated that she had suspected that the IUD caused her harm beginning in 1981 because she had stopped using birth control at that time and could not get pregnant. Id. She filed suit against the manufacturer in 1990. Id. The Second Circuit affirmed the district court’s decision granting summary judgment and determined that the plaintiff’s claim was barred by § 52-577a(a) because “by her own admission, [the plaintiff] had recognized [in 1981], or should have recognized, the critical link between her injury and the defendant’s causal connection to it.” Id. at 138. The court emphasized that the statute begins to run when “the plaintiff discovers some form of actionable harm, not the fullest manifestation thereof.” Id.; Burns, 192 Conn. at 459-60 (1984) (actionable harm occurred when doctor told plaintiff, child’s mother, of causal connection between child’s infection and contaminated IV tubes); see also Peerless Ins. Co., 48 Conn. App. at 167 (determining plaintiffs’ 1992 product liability complaint was barred by §52-577a(a) because plaintiffs were informed less than a month

after fire to their house in 1988 by fire marshal about the product defect that caused the fire, which constituted notice of actionable harm).

The multidistrict litigation pending before Judge Goodwin in the United States District Court for the Southern District of West Virginia also offers a series of examples of pelvic mesh cases which were barred by the statute of limitations because they were filed too long after actionable harm occurred. For example, in Smothers v. Boston Sci. Corp. (In re Boston Sci. Corp., Pelvic Repair Sys. Prods. Liab. Litig.), 2014 U.S. Dist. LEXIS 97371 (S.D. W. Va. July 11, 2014), the court applied a Massachusetts statute which is nearly identical to Connecticut because the statute of limitations begins to run: “when a plaintiff discovers, or any earlier date when she should reasonably have discovered, that she has been harmed or may have been harmed by the defendant’s conduct. . . . A plaintiff must have (1) knowledge or sufficient notice that she was harmed and (2) knowledge or sufficient notice of what the cause of harm was.” (Citations omitted.) Id. at \*670-71. In Smothers, the plaintiff was implanted with a pelvic mesh product on May 11, 2009. She experienced pain symptoms beginning three weeks after the surgery, which the plaintiff admitted in her deposition that she attributed to the device. Id. at \*672-73. The court determined that actionable harm occurred three weeks after the surgery and the statute of limitations began to run on that date. Id. at \*673. The court granted summary judgment on statute of limitations grounds because the plaintiff did not file her complaint within three years of suffering actionable harm. Id. at \*674. See also Robinson v. Boston Sci. Corp. (In re Boston Sci. Corp., Pelvic Repair Sys. Prods. Liab. Litig.), 2015 U.S. Dis. LEXIS 39988, at \*15 (S.D. W. Va. March 30, 2015), aff’d, 647 Fed. Appx. 184 (4th Cir. 2016) (statute of limitations began running when plaintiff’s doctor told her she should have pelvic mesh product removed).

Similarly, the same district court granted a pelvic mesh product manufacturer's motion for summary judgment under Arkansas law. See Brawley v. Boston Sci. Corp. (In re Boston Sci. Corp.), 2015 U.S. Dist. LEXIS 42707 (S.D. W. Va. Mar. 31, 2015). Like Connecticut, the statute of limitations under Arkansas law begins to run when the "plaintiff knew or, by the exercise of reasonable diligence, should have discovered the causal connection between the product and the injuries suffered." Id. at \*9. The plaintiff had a pelvic mesh product surgically implanted on March 2, 2005. Id. at \*2- 3. She began to experience symptoms of bodily injury in July 2005. Id. at \*7. She underwent a procedure to remove part of the mesh on July 5, 2005 and at that time her doctor told her that her symptoms had been caused by the pelvic mesh product. Id. at \*8. The court determined that the plaintiff learned of actionable harm at that time because the undisputed facts demonstrated that she should have discovered the causal connection between the product and her injuries. Id. at \*13-14. She did not file a complaint, however, until almost five years after the statute of limitations had expired. Id. at \*14-15. See also In re Boston Sci. Corp., 2015 U.S. Dist. LEXIS 38200, at \*11 (S.D. W. Va. March 26, 2015) (emphasis in original) (statute of limitations began to run when plaintiff "underwent a procedure to remove exposed mesh, she was aware that the [] mesh product had been implanted inside of her *and* that she was experiencing adverse health effects"). In Brawley, the court specifically rejected the argument that the statute of limitations is triggered only when a plaintiff discovers that a defective product caused her injuries and it also rejected the argument that the statute of limitations did not run until the plaintiff discovered the specific cause of action when she saw mesh lawsuit ads on television. See Brawley, 2015 U.S. Dist. LEXIS 42707 at \*9, 13.

Here, Ms. Sherwood started experiencing pain from the Ethicon Prolift in 2006. She consulted with Drs. Hines, Bercik, Gee, Serrelles, Porges, Komarynsky, Staskin, Surrells and

Grey before the middle of 2008 before selecting Dr. Raz to perform a total removal of the Ethicon Prolift in February, 2011. She testified about each of these consultations and that testimony is quoted in the Statement of Facts. Each consultation would start the statute of limitations under the Supreme Court's test in Catz.

Like the plaintiffs in Gnazzo and Smothers, Ms. Sherwood, by her own admission, in 2006 and 2007 attributed the harm that she was suffering to the then recently implanted device. She sought additional treatment and, by June 2008, all of the Plaintiff's doctors told her that she should have the device removed. Pp. 143, 145, 147, 154 (Sherwood Depo.), Exhibit 1, Allentuch Declaration. See Timothy v. Boston Scientific Corp. (In re Boston Sci. Corp.), 2015 U.S. Dist. LEXIS 38389, at \*15 (S.D. W. Va. Mar. 26, 2015) (actionable harm occurred when doctor informed patient that pelvic mesh product needed to be removed); see also Norris v. Baxter Healthcare Corp., 397 F.3d 878, 888 (10th Cir. 2005) (determining under similar Colorado statute that actionable harm occurred when plaintiff felt something was not normal in right breast and doctors told her she should have implants removed).

There is no genuine issue of material fact that, during these dates from late 2006 to 2008, plaintiff repeatedly recognized that she was suffering harm and knew that the harm was caused by the Ethicon Prolift. The Plaintiff eventually had the device removed in February, 2011, which, at the absolute latest was when the statute of limitations began to run. See In re Boston Sci. Corp., 2015 U.S. Dist. LEXIS 38200 at \*11. This August, 2014 Complaint was filed years after the three year statute of limitations expired and therefore summary judgment is required.

**A. Plaintiff's Argument That the CPLA Statute of Limitations Does Not Start to Run Until She Knew She Had A Cause of Action Has No Legal Basis**

Although not supported by precedent, Ms. Sherwood's counsel asserts that the three year statute of limitations on Ms. Sherwood's CPLA claim did not start to run until approximately

June, 2014 because that is when she first “kn[e]w that Stamford Hospital had some sort of liability.” P. 189 (Sherwood Depo.), Exhibit 1, Allentuch Declaration.<sup>6</sup> Plaintiff apparently relies on Tarnowsky to support her argument. In Tarnowsky, the Supreme Court determined that, in a negligence action, the statute of limitations “does not begin to run until a plaintiff knows, or reasonably should have known, the **identity** of the tortfeasor.” (Emphasis added). Tarnowsky v. Socci, 271 Conn. 284, 297 (2004). The “identity” is a fact not a legal theory. Id. Here, Ms. Sherwood always knew she had the Prolift surgery at Stamford Hospital. The Tarnowsky exception to the general rule is therefore inapplicable.

Contrary to plaintiff’s position on this issue, the Appellate Court continues to hold that actionable harm is determined based on the “*plaintiff’s knowledge of the facts rather than on the discovery of applicable legal theories.*” Mollica v. Toohey, 134 Conn. App. 607, 613 (2012). Plaintiff’s interpretation of Tarnowsky would render statutes of limitations meaningless. Under the Plaintiff’s flawed interpretation, any statute of limitations enacted by our legislature does not arguably begin to run until a member of the plaintiff’s bar tells a prospective plaintiff whether or not she has a cause of action. No precedent supports this extraordinary proposition.

## **II. Plaintiff’s Non-CPLA Claims Are Barred By the Statute of Limitations**

Plaintiff’s non-CPLA claims are barred by applicable statutes of limitations for the same reason as the product liability claim. The Complaint alleges two overarching theories. The first is that Stamford Hospital provided plaintiff with a defective product. The second theory is that Stamford Hospital failed to warn plaintiff that the Ethicon Prolift was a defective product at the time of the surgery. Plaintiff’s ten new counts in the proposed Amended Complaint are all

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<sup>6</sup> “MS. FUSCO: . . . The statute begins to run under Turnowski (ph.) when a plaintiff knew or should have known she had a cause of action, which includes the fact she has a -- she can know she's injured and she can know that an entity such as Stamford Hospital may be connected to that injury. But the statute doesn't start to run until she knows that Stamford Hospital had some sort of liability.” Id.

variations of these theories. Because the alleged conduct involves actions prior to the surgery, the statute of limitations began to run no later than the date the device was implanted, April 12, 2006. The longest statute of limitations for the ten additional non-CPLA counts is four years and therefore expired not later than 2010, more than four years before the date on the Summons. Since all of these claims are barred, summary judgment is appropriate.

The Second (negligence), Fifth (recklessness), and Seventh (lack of informed consent) Counts are subject to the two year statute of limitations in Conn. Gen. Stat. § 52-584,<sup>7</sup> which begins to run “from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered.” These counts are based on alleged conduct that occurred prior to the surgery. The statute of limitations for these claims expired in 2008, two years after the surgery. The negligence claim expired no later than 2009, as it contains a one year statute of repose. See Footnote 7.

Stamford Hospital is entitled to summary judgment on the Third (breach of express warranty) and Fourth (breach of implied warranty) Counts. Actions regarding the sale of goods, including breach of warranty claims, are governed by the Connecticut Uniform Commercial Code’s four year statute of limitations, which begins to run upon delivery of the product. Conn. Gen. Stat. § 42a-2-725. Accepting for sake of argument plaintiff’s legally incorrect assertion that the surgery was a sale of goods on April 12, 2006, the statute of limitations for any breach of warranty claim expired on April 12, 2010. This action is more than four years too late.

The Sixth (civil conspiracy),<sup>8</sup> Eighth (innocent misrepresentation),<sup>9</sup> Ninth (negligent misrepresentation) and Tenth (intentional misrepresentation) Counts are subject to the three year

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<sup>7</sup> Section 52-584 also contains a statute of repose which bars any action “more than three years from the date of the act or omission complained of. . .”

<sup>8</sup> Civil conspiracy is not an independent cause of action. “Rather, the action is for damages caused by acts committed pursuant to a formed conspiracy rather than by the conspiracy itself. . . . Thus, to state a cause of action, a



statute of limitations in Conn. Gen. Stat. § 52-577. These Counts consist of allegations that Stamford Hospital misrepresented the safety of the Ethicon Prolift prior to Ms. Sherwood's surgery, meaning that the statute of limitations began to run in 2006 and expired in 2009.

Stamford Hospital is also entitled to summary judgment on the Eleventh Count (CUTPA). CUTPA claims are governed by a three year statute of limitations. General Statutes § 42-110g(f). The statute of limitations on plaintiff's CUTPA claim also expired in 2009, more than five years before the date on the Summons. For all of these reasons, Stamford Hospital is entitled to summary judgment on Counts Two through Eleven.

### **III. Stamford Hospital Is Entitled to Summary Judgment On All Non-CPLA Claims Because They are Barred by the CPLA's Exclusivity Provision**

A plaintiff cannot seek CPLA damages by filing a CPLA claim and then seek the same damages in a non-CPLA claim.<sup>10</sup> Conn. Gen. Stat. § 52-572n(a) states: "[a] product liability claim as provided in sections 52-240a, 52-240b, 52-572m to 52-572q, inclusive, and 52-577a may be asserted and shall be in lieu of all other claims against product sellers, including actions of negligence, strict liability and warranty, for harm caused by a product." The Connecticut Supreme Court has held that all claims for personal injury, death, or property damage, if related to a defective product, are properly pled under CPLA, *and that the CPLA precludes any other claims for the same damage resulting from that defective product.* See Gerrity v. R.J. Reynolds Tobacco Co., Inc., 263 Conn. 120, 128 (2003).<sup>11</sup>

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claim of civil conspiracy must be joined with an allegation of a substantive tort." Harp v. King, 266 Conn. 747, 779 n.37 (2003).

<sup>9</sup> Innocent misrepresentation is not a claim but counsel is assuming plaintiff erroneously pled two identical counts of negligent misrepresentation.

<sup>10</sup> Here, plaintiff has filed the following additional claims: negligence, breach of express warranty, breach of implied warranty, recklessness, civil conspiracy, lack of informed consent, innocent misrepresentation, negligent misrepresentation, intentional misrepresentation, and CUTPA.

<sup>11</sup> See also Winslow v. Lewis-Shepard, Inc., 212 Conn. 462, 471 (1989) ("[t]he legislature clearly intended to make our products liability act an exclusive remedy for claims falling within its scope"); Daily v. New Britain Machine

In Gerrity, the Supreme Court was faced with the question of whether a CUTPA claim could be asserted in conjunction with claims under the CPLA. The plaintiff in that case sought damages under the CPLA for injuries allegedly suffered as a result of the defendants' defective product (cigarettes) and further sought damages under CUTPA as a result of the defendants' scheme to conceal the defect. Id. at 123. The Court noted that the CUTPA claim sought to redress a financial injury—i.e., the decedent allegedly paid a higher price for cigarettes as a result of the defendant's scheme—rather than a traditional tort-based remedy. The Gerrity court concluded that, since the plaintiff was not seeking recovery for “personal injury, death or property damage” in her CUTPA claim, the claim was not barred by the exclusivity provision of the CPLA and could be pursued along with the product liability claims. Id. at 129.

Consistent with this holding, the Supreme Court barred claims in Hurley v. Heart Physicians, P.C., 278 Conn. 305 (2006). In that case, the plaintiff sought damages covered by the CPLA. The Court concluded that the plaintiff's CUTPA claim was barred by the CPLA's exclusivity provision because the plaintiff sought damages for personal injuries resulting from the implantation of a pacemaker, the same remedy sought in her product liability claim. Id. at 324. The situation here is no different. Plaintiff's negligence claim is “nothing more than . . . a products liability claim dressed in the robes<sup>12</sup>” of a negligence claim as she seeks damages for personal injuries, not redress from a financial injury, as a result of the “unsafe and defective products” used in surgery. The same is true of the other non-CPLA claims in the Complaint. They consist almost entirely of the incorporated CPLA allegations.

Furthermore, post-Gerrity, numerous superior courts have concluded that a variety of claims, including negligence claims and other claims, are barred by the exclusivity provision of

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Co., 200 Conn. 562, 571 (1986) (“[t]he products liability statute provides an exclusive remedy and ... plaintiffs cannot bring a common law cause of action for a claim within the scope of the statute”).

<sup>12</sup> See Gerrity, 263 Conn. at 129.

the CPLA where they seek damages for personal injuries as a result of a defective product. See Zarikos v. Signature Bldg. Sys., 2009 Conn. Super. LEXIS 868 (Conn. Super. Ct. Mar. 24, 2009) (“CPLA expressly provides that a product liability claim shall include claims of negligence. The [negligence] Count is also governed by the exclusivity provision of CPLA and is stricken”); Davey v. Prof'l Props. II, LLC, 2009 Conn. Super. LEXIS 667 (Conn. Super. Ct. Mar. 20, 2009) (The court found that the negligence and breach of warranty claims fell within the purview of the exclusivity provision of the Products Liability Act); Iodice v. Ward Cedar Log Homes, 2012 Conn. Super. LEXIS 2961 (Conn. Super. Ct. Dec. 4, 2012) (“There are no allegations in count six outside the scope of the CPLA. Count six, therefore, is nothing more than a product liability claim dressed in the robes of breach of contract”); Whitting v. Eli Lilly & Co., 2007 Conn. Super. LEXIS 2364 (Sept. 10, 2007) (striking a CUTPA count because plaintiff’s claim for personal injuries arising out of use of Cymbalta fell within the scope of the CPLA). In performing this analysis, each court examined the pleadings and what the plaintiff sought in the complaint. Here, all of the claims essentially have the identical allegations. In addition, these courts did not deny the motions to strike because they were potentially pleaded in the alternative. The CPLA and non-CPLA claims for the same damages could not co-exist.

The proposed Amended Complaint seeks CPLA damages for all claims and therefore the non-CPLA claims are barred by the CPLA’s exclusivity provision. Paragraph 41 of the Amended Complaint for all counts lists a series of injuries that are caused by the Pelvic Mesh Products (the Ethicon Prolift). Paragraph 45 for all claims alleges that “as a result of the defective nature of said products, the plaintiff suffered numerous, painful and permanent consequences.” Paragraph 46 and 47 for all claims each list a series of injuries she suffered as a

result of the Pelvic Mesh Products (the Prolift). These allegations illustrate that plaintiff seeks compensation for personal injuries caused by the products at issue in this case.<sup>13</sup>

The plaintiff's request for relief seeks monetary damages for the same personal injuries that underlie her products liability claim in the First Count. Under Gerrity, Stamford Hospital is entitled to summary judgment on the remaining counts as a matter of law.

#### **IV. Stamford Hospital Is Entitled To Summary Judgment On The Product Liability Count Because It Is Not A Product Seller Under The CPLA As A Matter of Law**

In order to maintain a product liability action under Section 52-572m et seq., a plaintiff must establish and prove that the defendant was engaged in the business of selling the product at issue and that the defect existed at the time of the sale. Zichichi v. Middlesex Memorial Hosp., 204 Conn. 399, 403 (1987). "Once a particular transaction is labeled a 'service' as opposed to a 'sale' of a 'product,' it is outside the purview of our product liability statute." Id.,<sup>14</sup> see also Paul v. McPhee Electrical Contractors, 46 Conn. App. 18, 23 (1997) (holding that a defendant electrician who installed a light fixture was not a product seller; defendant was not responsible for placing the product into the stream of commerce). Even in cases that are factually similar to this case, Connecticut courts have found that a hospital is not a product seller of a device

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<sup>13</sup> To determine whether the CPLA precludes plaintiff's claims is a question of law which requires the court analyze only the Complaint, not evidence. See Gerrity, 263 Conn. 126. On a dispositive motion, finding that claims for injuries arising from the defective product are preempted by the CPLA's exclusivity, the Supreme Court explained that it "reach[ed] this conclusion based on the following analysis of the plaintiff's second amended complaint." (Emphasis added). Id. at 129. Similarly, in Hurley v. Heart Physicians, P.C., 278 Conn. 305 (Conn. 2006), the Supreme Court affirmed the lower court's decision granting defendant summary judgment on that the CUTPA claim. The Supreme Court held that "[a]fter reviewing carefully the allegations in the plaintiffs' CUTPA count in the present case, we agree with the trial court that the plaintiffs are pursuing a claim for personal injuries to Nicole and are seeking recompense for those injuries caused by the defendant's pacemaker that was implanted in Nicole. Accordingly, the plaintiffs' claim falls within the scope of the liability act and thus is barred by the exclusivity provision under § 52-572n (a)." (Emphasis added) Id. at 326. Since it is the responsibility of the Court to review and analyze the allegations, as the Supreme Court did, it is impossible for there to be an issue of fact. There is nothing for the jury to decide. See Town of Sprague v. Mapei Corp., 2012 U.S. Dist. LEXIS 72578, \*2 (D. Conn. May 24, 2012) ("In determining whether a [claim] falls within the scope of the CPLA, the Court should examine the nature of the injury alleged and the alleged act that caused the harm").

<sup>14</sup> Zichichi held that because the provision of blood at a hospital is a medical service rather than a sale of a product, the [Product Liability] Act did not apply. Id. at 405. Similarly, here, the operation performed on the plaintiff at Stamford Hospital is properly characterized as a service, and the furnishing of surgical equipment and supplies, including the Ethicon Prolift, is incidental to that service.

implanted during surgery. Kenneson v. Johnson & Johnson, Inc., 2015 U.S. Dist. LEXIS 53584, \*7 (D. Conn. Apr. 23, 2015)(In a case involving an Ethicon prolene mesh device under the CPLA against St. Mary's Hospital and Ethicon, the court found that "[i]t is true that the Connecticut Product Liability Act, Conn. Gen. Stat. § 52-572m et seq. ("CPLA"), applies only to sales of products, not to services, and binding precedent holds that surgical implantation of a medical device is a service."').<sup>15</sup>

As set forth below, Connecticut appellate cases, more than a dozen Superior Court cases, the law of fifty states, the Restatement of Torts (which the Connecticut Supreme Court has adopted) and every Connecticut and national product liability treatise unanimously agree that a medical device implanted in a hospital operating room during surgery is part of service and is not a sale by a hospital. In this context, hospitals are not product sellers.

Section 52-572m(a) defines a "product seller" as "any person or entity, including a manufacturer, wholesaler, distributor<sup>16</sup> or retailer who is engaged in the business of selling such products whether the sale is for resale or for use or consumption." Whether a defendant is a "product seller" under the CPLA is a question of law for the court and not the jury to decide.

Svege v. Mercedes-Benz Corp., 329 F. Supp.2d 272 (D.Conn. 2004); Nazar v. Palli, 2013 Conn. Super. LEXIS 830, 10-11, 2013 WL 1867072 (Conn. Super. Ct. Apr. 15, 2013) (Striking CPLA

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<sup>15</sup> Stamford Hospital concedes that this Court has issued decisions denying summary judgment in the Farrell case on this issue. In the first summary judgment decision, Judge Agati issued a tri-fold decision in which he found there was an unspecified issue of fact. Plaintiff never made that argument. In the second summary judgment motion, Judge Zemetis denied the motion in a tri-fold decision which just said "denied." Since neither decision contained any analysis, it is difficult to determine the basis for them or whether they could be applicable.

<sup>16</sup> Plaintiff alleges in the Complaint that Stamford Hospital is a distributor under FDA regulations and assumes that it therefore must be a distributor under the CPLA. Complaint, First Count ¶ 23. These are different bodies of law and are not comparable. No Connecticut court has ever found that a hospital is a distributor of medical devices used during surgery. Based on defense counsel's research, no court in the country has relied on the FDA regulations to hold that a hospital is a product seller for purposes of liability in litigation. In addition, §20(b) of the Restatement 3d of Torts states that one distributes a product when "in a commercial transaction other than a sale, one provides a product as a "preliminary step leading to ultimate use or consumption." Examples are a lessor or bailor who provides free products as a means of promoting use or consumption. This definition does not apply to the Hospital and it is not a distributor.

claim and reasoning that “it is well-established that the question of whether the defendants are ‘product sellers’ is a question of law. The plaintiff makes a number of conclusory statements in her complaint, such as that the defendants ‘were engaged in the selling of products, including the running water and plumbing facilities provided to the tenant and his family, the plaintiff . . .’ The plaintiff states similar legal conclusions to support her claim that the defendants are ‘product manufacturers.’ These statements are not factual allegations, and the court is not required to admit such conclusory statements as true.”); Burkert v. Petrol Plus of Naugatuck, Inc., 216 Conn. 65, 72, 579 A.2d 26 (1990).<sup>17</sup>

Trial level courts in Connecticut have nearly uniformly concluded that hospitals are not liable under the CPLA for devices used in surgery because hospitals are providers of medical services, not “product sellers.”<sup>18</sup> See Zelle v. Bayer Corp., 2012 Conn. Super. LEXIS 892 (Feb 2, 2012, Brazzel-Massaro, J.) (holding that a hospital is not a “product seller” under the CPLA merely because it charged for contrast dye used in the course of an MRI; the use of contrast dye was incidental to the service performed by the hospital); Zbras v. St. Vincent’s Medical Center, 2002 Conn. Super. LEXIS 878 (March 20, 2002, Rush, J.), aff’d, 91 Conn. App. 289, cert.

<sup>17</sup> See also, South United Methodist Church v. Joseph Gnazzo Co., 2011 Conn. Super. LEXIS 3228, 4 (Conn. Super. Ct. Dec. 23, 2011)(“Whether a party is a product seller under the PLA is a question of law.”); Lewis v. Huntleigh Healthcare, LLC, 2011 Conn. Super. LEXIS 1667, 10, 2011 WL 3276712 (Conn. Super. Ct. July 1, 2011); Klein v. Phelps, 2007 Conn. Super. LEXIS 2205, 6 (Conn. Super. Ct. July 19, 2007); Estate of Maroni v. Bobcat of Connecticut, Inc., 2007 Conn. Super. LEXIS 408, 6 (Conn. Super. Ct. Feb. 7, 2007); Leahey v. Lawrence D. Coon & Sons, Inc., 2006 Conn. Super. LEXIS 2157, 7, 2006 WL 2130438 (Conn. Super. Ct. July 14, 2006); Plas-Pak Indus. v. Prime Elec., LLC, 2006 Conn. Super. LEXIS 1851, 14 (Conn. Super. Ct. June 19, 2006); Caruso v. Kovatch Corp., 2005 Conn. Super. LEXIS 2890, 10, 2005 WL 3112749 (Conn. Super. Ct. Oct. 31, 2005).

<sup>18</sup> In fact, the same is true on both a national basis and in treatises repeatedly quoted by Superior Courts. See 1-5 Products Liability § 5.11 ([P]hysicians, dentists, optometrists, pharmacists . . . and other healthcare professionals are generally not liable on product claims. Hospitals, likewise, will not be subject to strict liability so long as the product involved relates to the professional treatment rendered.”) This treatise cites dozens of cases from around the country in support of this proposition. See W. Prosser and W. Page Keeton, Prosser and Keeton on Torts, §104 at 720 (5th ed. 1984)(“Hospitals, medical doctors, and other professionals who provide health care services have not generally been held strictly liable even when, in the course of rendering health care services, defective products are transmitted. They are not regarded as the type of enterprises, akin to the producers of mass products, that can conveniently bear the costs of accidents attributable to defective things used or transmitted. Moreover, the principal thing bargained for is not the product transmitted but the professional services of the defendant.”); O’Dell v. Greenwich Healthcare Services, Inc., 2013 Conn. Super LEXIS 972, \*12 (Conn. Super. Ct. April 25 2013); Herrick v. Middlesex Hospital, 2005 Conn. Super LEXIS 1672 (Conn. Super. Ct. June 27, 2005).

denied, 276 Conn. 910 (2005) (holding that hospitals are not in the business of selling equipment utilized in operative procedures but rather are engaged in the business of providing medical services); Kenneson v. Johnson & Johnson, Inc.,<sup>19</sup> 2015 U.S. Dist. LEXIS 53584, \*7 (D. Conn. Apr. 23, 2015) (“It is true that the Connecticut Product Liability Act, Conn. Gen. Stat. § 52-572m et seq. (“CPLA”), applies only to sales of products, not to services, and binding precedent holds that surgical implantation of a medical device is a service.”); Zbras v. St. Vincent's Med. Ctr., 91 Conn. App. 289, 880 A.2d 999, 1002 (2005)”; Lambert v. Charlotte Hungerford Hosp., 2006 Conn. Super. LEXIS 3418 (November 2, 2006, Brunetti, J.) (concluding that a hospital was not a “product seller” of surgical instruments used in connection with plaintiff’s surgery); Herrick v. Middlesex Hosp., 2005 Conn. Super. LEXIS 1672 (June 27, 2005, Silbert, J.) (granting summary judgment to defendant hospital, reasoning that the hospital is in the business of providing surgeons who use the hospital’s facilities for medical operations with needed supplies, including the rod in question . . . the hospital’s primary role is a provider of services and not of products); Wallace v. Gerard Medical Inc., 2003 Conn. Super. LEXIS 1114 (April 7, 2003, Wiese, J.) (a hospital is not a “product seller” pursuant to §52-572m(a), but rather is engaged in providing a medical service); Ferguson v. EBI Medical Systems, 1995 Conn. Super. LEXIS 2228, at \*12 (Aug. 1, 1995, Hurley, J.) (“The court finds it persuasive that every superior court decision that has directly addressed the merits of this issue has rejected the proposition that hospitals constitute ‘product sellers’ under the PLA.”); Lewis v. Hospital of Saint Raphael, 1988 WL 1519759 (Conn. Super.) (March 15, 1988, Flanagan, J.) (hospital was not “product seller” of fusion wire used in plaintiff’s surgery which was claimed to be defective); Krawiec v. Olympus Corp., 1988 WL 1519758 (Conn. Super.) (June 15, 1988, Aronson, J.) (hospital was not a

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<sup>19</sup> The product at issue in Kenneson was one of the devices referenced in the Complaint that was implanted into a patient during surgery.

“product seller” of allegedly-defective surgical instruments sold to hospital and used by surgeon). There is no applicable precedent, when applied to the basic facts in this case that supports the Plaintiff’s CPLA claim.

In Zelle, for example, plaintiff asserted a product liability claim against Danbury Hospital claiming that she had an adverse reaction to a contrast dye, Magnevist, which was used in connection with an MRI performed at the hospital. Relying on the vast number of superior court cases concluding that hospitals are not product sellers, Judge Brazzel-Massaró granted summary judgment in the hospital’s favor, reasoning as follows:

In determining the question in this action, the court is cognizant of the fact that the plaintiff went to Danbury Hospital not to obtain the Magnevist, but for the purpose of medical assistance for an emergency complaint that led to the procedure, that is, the MRI, in an effort to treat her medical symptoms. This particular procedure was a service provided to the plaintiff that utilized Magnevist as incidental to the main purpose of the service provided by Danbury Hospital. This service was not for a sale of goods. Even if the service included a separate cost of the medication in the breakdown of the overall cost for the service, it was not the focus of the service but only incidental. Suffice it to say, if the plaintiff was asked why she went to Danbury Hospital on this date, she clearly would not have responded that it was to obtain Magnevist but may have indicated it was to diagnose her illness.

Id. at \* 10-11.

Similarly, in Zbras, the plaintiff brought an action against the hospital alleging that the pedicle screws ordered and used by the surgeon in connection with his operation at the hospital were defective. The defendant, St. Vincent’s Medical Center, moved for summary judgment on the basis that, although it provided and charged for the surgical products used in the surgery, it was not a “product seller” as defined by General Statutes § 52-572m(a). The court (Rush, J.) entered summary judgment in defendant’s favor, reasoning that “hospitals are not engaged in the



business of selling equipment utilized in operative procedures but rather are engaged in the business of providing medical services.” Id. at \*2. The fact that the defendant had charged the patient for the surgical products at issue did not change the court’s analysis or holding. The Zbras court echoed the rationale stated by the Pennsylvania Supreme Court case that “the thrust of the inquiry is thus not whether a separate consideration is charged for the physical material used in the exercise of medical skill but what service is performed to restore or maintain the patient’s health.” Zbras v. St. Vincent’s Medical Center, 2002 Conn. Super. LEXIS 878, at \*2-3, citing Cafazzo v. Central Med. Health Svs., 6689 A.2d 521 (Pa. 1995). In its decision affirming summary judgment, the Appellate Court stated that a hospital “can bill for goods provided incidental to surgery without being in the business of selling goods” and that “the transaction in this case, a surgery, clearly was labeled a service rather than the sale of a product.” Zbras, 91 Conn. App. 289, 294, cert. denied, 276 Conn. 910 (2005). The Appellate Court’s analysis of this issue should serve as forceful guidance in support of a determination that, in this case, the Pelvic Mesh Products were not sold by the Hospital, but were incidental to a service—namely, a surgery that was performed at the Hospital.

Furthermore, courts on a national basis also do not hold hospitals liable for defective products used during surgery. According to the Restatement 3d of Torts, “in a strong majority of jurisdictions, hospitals are held not be sellers of products they supply in connection with the provision of medical care, regardless of the circumstances.” (Emphasis added) Restatement 3d of Torts: Products Liability, § 20 “Definition of ‘One Who Sells or Otherwise Distributes,’” Comment d. The Connecticut Supreme Court has adopted the Restatement analysis and it is binding on Connecticut courts. See Vitanza v. Upjohn Co. 257 Conn. 365, 373, 376 (2001) (Following the Restatement of Torts on Product Liability); see also Giglio v. Connecticut Light

& Power Co., 230, 233 (1980) (The court “accepted the principles adopted by the American Law Institute as contained in § 402A of the Restatement (Second) of Torts, establishing the strict liability in torts”).

As discussed previously, national products liability treatises agree with the Restatement 3d. National products liability treatises agree with the Restatement 3d. As a general matter, a hospital is not a product seller for medical devices the hospital did not manufacture and which were used during surgery in all fifty states See 1-8 Products Liability Practice Guide § 8.05 (“The overwhelming majority of jurisdictions . . . hold that a hospital cannot be held strictly liable for providing a drug or medical device in conjunction with a medical procedure.”); see also, In re Breast Implant Prod. Liab., 331 S.C. 540, 549-550, 503 S.E.2d 445, 450, 1998 S.C. LEXIS 62, 15, 38 U.C.C. Rep. Serv. 2d (Callaghan) 49 (S.C. 1998) (“A significant number of other jurisdictions have also reached the conclusion that strict liability should not be imposed upon health care providers.”). That is also why appellate courts uniformly affirm trial court decisions dismissing product liability claims against hospitals for devices implanted during surgery. See, e.g., Royer v. Catholic Med. Ctr., 144 N.H. 330, 335, 741 A.2d 74, 78, 1999 N.H. LEXIS 118, 13, CCH Prod. Liab. Rep. P15,700 (N.H. 1999) (“Accordingly, the trial court did not err in granting the defendant [hospital]’s motion to dismiss” the product liability claim against Catholic Medical Center for the prosthetic knee implanted during surgery.) Because Stamford Hospital is not a product seller as a matter of law anywhere in the United States for medical devices implanted during surgery which it did not manufacture, it is entitled to summary judgment on the product liability count.

## **CONCLUSION**

For the foregoing reasons, Stamford Hospital respectfully requests that the Court grant its motion for summary judgment.

**DEFENDANT,  
STAMFORD HEALTH SYSTEM  
D/B/A STAMFORD HOSPITAL**

/s/ Simon I. Allentuch \_\_\_\_\_.

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**CERTIFICATION**

I hereby certify that a copy of the foregoing was sent via email to the following counsel  
of record on the 30th day of September, 2016:

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/s/ Simon I. Allentuch  
Simon I. Allentuch

**DOCKET NO.: CV-14-6025333-S** : **COMPLEX DOCKET**

**ROBIN SHERWOOD and**  
**GREG HOELSCHER** : **J.D. OF WATERBURY**

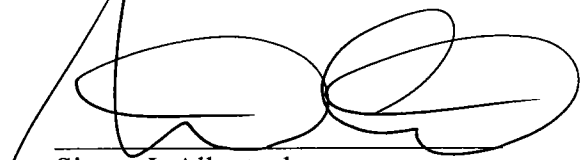
**V.** : **AT WATERBURY**

**STAMFORD HEALTH SYSTEM, INC.**  
**D/B/A STAMFORD HOSPITAL** : **September 30, 2016**

**DECLARATION OF SIMON I. ALLENTUCH**

Simon I. Allentuch declares, pursuant to 28 U.S.C. § 1746 under penalty of perjury and the Supremacy Clause of the United States Constitution, as follows:

1. I am a principal in law firm, Neubert, Pepe & Monteith, P.C., attorneys for defendant Stamford Hospital and I make this Declaration in Support of Stamford Hospital's Motion for Summary Judgment.
2. Attached as Exhibit 1 is a copy of Robin Sherwood's deposition in this case.
3. Attached as Exhibit 2 are portions of Ms. Sherwood's medical records from her surgeon, Dr. Brian Hines.



Simon I. Allentuch

# Exhibit 1

SUPERIOR COURT  
COMPLEX DOCKET  
AT WATERBURY

- - - - -

ROBIN SHERWOOD and GREG  
HOELSCHER,

v

DOCKET NUMBER:  
UWY-CV-14-6025333-S

STAMFORD HEALTH SYSTEM,  
INC. D/B/A STAMFORD HOSPITAL

- - - - -

DEPOSITION OF ROBIN SHERWOOD, taken in  
accordance with the Connecticut Practice Book at the  
law offices of Tooher Woel & Leydon, 80 Fourth  
Street, Stamford, Connecticut 06905, before Mercedes  
Marney-Sheldon, RPR, a Registered Professional  
Reporter and Notary Public, in and for the State of  
Connecticut on Tuesday, September 20, 2016, at 10:15  
a.m.

DEL VECCHIO REPORTING SERVICES, LLC  
PROFESSIONAL SHORTHAND REPORTERS  
117 RANDI DRIVE  
MADISON, CT 06443  
203 245-9583

Hartford

New Haven

Stamford

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22

23

24

25



A P P E A R A N C E S (Continued)

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## S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between counsel representing the parties that each party reserves the right to make specific objections at the trial of the case to each and every question asked and of the answers given thereto by the deponent, reserving the right to move to strike out where applicable, except as to such objections as are directed to the form of the question.

IT IS FURTHER STIPULATED AND AGREED by and between counsel representing the respective parties that proof of the official authority of the Notary Public before whom this deposition is taken is waived.

IT IS FURTHER STIPULATED AND AGREED by and between counsel representing the respective parties that the reading and signing of this deposition by the deponent is not waived.

IT IS FURTHER STIPULATED AND AGREED by and between counsel representing parties that all defects, if any, as to the notice of the taking of the deposition are waived.

Filing of the Notice of Deposition with the original transcript is waived.

1 ROBIN SHERWOOD

2 Called as a witness, having been first duly  
3 sworn by a Notary Public of the State of  
4 Connecticut, was examined and testified as  
5 follows:

6 - - -

7 THE REPORTER: For the record, I need  
8 to ask you your name and address.

9 THE WITNESS: Robin Sherwood. One  
10 Clapboard Ridge Road, Greenwich 06830.

11 THE REPORTER: Thank you.

12 - - -

13 DIRECT EXAMINATION BY MR. ALLENTUCH

14 - - -

15 BY MR. ALLENTUCH:

16 Q Good morning, Ms. Sherwood. As you  
17 probably know already, my name is Simon Allentuch  
18 and I represent Stamford Hospital.

19 Have you ever been deposed before?

20 A No.

21 Q All right. Why don't we go through a  
22 couple ground rules --

23 A Okay.

24 Q -- just so that we can have a  
25 productive deposition.

1                   So I'm going to ask you some  
2       questions. The court reporter is going to take  
3       down the questions that I ask and then you will  
4       have a chance to respond. The court reporter can  
5       only take down actual words, so if you shake your  
6       head, that will loosen up your neck maybe but it  
7       won't make it on to the record so you need to  
8       answer in words.

9                   Similarly, if you use words like  
10      "uh-huh" or "uh-uh," the court reporter is going  
11      to have trouble taking that down. So if you can  
12      confine your answers to English words --

13                A       Yes and no.

14                Q       -- that would be great.

15                    You may -- you may -- some doctors'  
16      names may come up during the deposition. If you  
17      know the spelling of the doctor's name, why don't  
18      you -- you can spell it out for the court  
19      reporter.

20                A       Okay.

21                Q       That would make it easier for her.

22                    If you don't understand a question  
23      I've asked you, please let me know and I will  
24      rephrase it.

25                A       Okay.

1           Q     As you probably gathered from what  
2     the court reporter is doing, she can't take down  
3     two of us at once. So if you can, just try to  
4     let me finish the question and I will do my best  
5     when you answer. Now, inevitably we're not going  
6     to be perfect about that, but we just both have  
7     to try.

8                     Finally, let me just say that if I  
9     ask you a question and you answer it, I'm going  
10    to assume and the record is going to reflect that  
11    you understood the question and answered it.  
12    Okay?

13           A     All right.

14           Q     Is there anything about these  
15    instructions that you don't understand? Are they  
16    clear to you?

17           A     I believe they're clear.

18           Q     Okay. Great. And as you mentioned  
19    before, obviously, if you can try to keep your  
20    voice up, that's going to help the court reporter  
21    too.

22           A     Okay.

23           Q     All right. If you need -- actually  
24    there is one thing I forgot. If you need to take  
25    a break, as long as there's no question pending,

1 let me know.

2 A Okay.

3 Q And, you know, if you need to use the  
4 bathroom, whatever, we will -- you know, we can  
5 do that.

6 All right. Are you currently on --  
7 taking any medication?

8 A I am.

9 Q Can you tell me what medication  
10 you're currently taking?

11 A Okay. I take Lunesta, 3 milligrams  
12 at night for sleeping. I take Plaquenil,  
13 P-L-A-Q-U-E-N-I-L, 400 milligrams a day. I take  
14 methenamine morning and night, 1 gram.

15 MS. FUSCO: Do you want to spell  
16 those? It's probably best to spell the  
17 medications, too, for the court reporter.

18 THE WITNESS: Okay. Methenamine is  
19 M-E-T-H-E-N-A-M-I-N-E.

20 In the mornings I take Wellbutrin,  
21 450 milligrams. I take metformin,  
22 500 milligrams.

23 Those are my daily medications. I  
24 have others for different things.

25 I take gabapentin at times for

1 chronic pain. I have a rescue medicine  
2 for migraines called diphenol hydro  
3 ergotamine [sic]. That may be --

4 MS. FUSCO: Was that diphenol hydro?

5 THE WITNESS: I -- I'm going to have  
6 to say I would have to clarify that.

7 MS. FUSCO: Do you have a trade name?  
8 Can you say it again? Diphenol hydro  
9 ergotamine?

10 THE WITNESS: I think it's dihydro  
11 phenol ergotamine.

12 MS. FUSCO: Dihydro phenol  
13 ergotamine.

14 THE WITNESS: I think the trade name  
15 is Migranal.

16 MS. FUSCO: Migranal, that makes  
17 sense.

18 THE WITNESS: I'm thinking here.

19 I take nitrofurantoin if I think I'm  
20 getting a urinary track infection. So I  
21 have that on hand. I don't take it daily.

22 And I have Xanax to take in case I  
23 need help -- you know, in case my Lunesta  
24 doesn't last through the whole night, I  
25 take that. Like half of a .025-milligram

1 pill. On occasion, not every day.

2 I think that's it.

3 BY MR. ALLENTUCH:

4 Q Okay. So let's just go through those  
5 real quick. You said you take Lunesta for sleep;  
6 is that right?

7 A Yes.

8 Q You take that every night before you  
9 go to sleep?

10 A Yes.

11 Q And you take Plaquenil; is that  
12 right?

13 A Yes.

14 Q And what's the Plaquenil for?

15 A I have a long diagnosis of  
16 undifferentiated mixed connective disease.

17 Q All right. And then -- I'm sorry.  
18 Is there something you wanted to add --

19 A Yes. I thought of two more things  
20 that I have for certain things. I don't take  
21 them every day or often.

22 One of them is called hyoscyamine.  
23 It's a rescue drug for a biliary attack that I  
24 get.

25 Q Is it glycosamine?



1           A       Hyoscyamine.

2           Q       Hyoscyamine.

3           A       Yes.

4           Q       And it's for respiratory attacks like  
5   asthma?

6           A       No.

7           Q       I apologize if I didn't --

8           A       That's okay.

9                   I have spasms in my sphincter of Oddi  
10   biliary tree, and that's a smooth muscle  
11   relaxant.

12                   And the other thing is tramadol.

13           Q       Okay. One of the medicines you  
14   mentioned, and I may not have written it down  
15   exactly right, is mechesamine [sic]. Am I not  
16   getting that right? Can you tell me --

17           A       I think you're blending two. I'll  
18   tell you what I think -- what I meant to tell  
19   you.

20           Q       Methenamine.

21           A       Methenamine. The trade name is  
22   Hiprex. It's a drug to help me not get UTIs.

23           Q       So is it an antibiotic?

24           A       No. It changes the pH in the urine.

25           Q       Okay. Wellbutrin is -- you take

1 Wellbutrin; is that right?

2 A Yes.

3 Q And that's an antidepressant?

4 A Yes. It's an antidepressant. It  
5 also helps with chronic pain.

6 Q Do you take it to help you with  
7 chronic pain?

8 A I take it for both reasons.

9 Q Okay. The next medication you  
10 mentioned, and I had some trouble hearing you  
11 over the ventilation system, it's met...?

12 A Metformin.

13 Q Metformin?

14 A Okay. I take that for -- to help me  
15 with weight loss.

16 Q When you say "help you with weight  
17 loss," what does metformin do?

18 A It --

19 MS. FUSCO: Objection to form.

20 You're asking the pharmacology?

21 MR. ALLENTUCH: I'm asking what  
22 she -- what her understanding is.

23 THE WITNESS: I don't know the  
24 chemical reaction it has.

25

1 BY MR. ALLENTUCH:

2 Q I'm not really asking for that. I'm  
3 just asking for your understanding of what -- why  
4 you take this medicine, what it does for you.

5 A The doctor that prescribed it thought  
6 that it would help my metabolism speed up and  
7 lower my appetite.

8 Q The next medicine you mentioned was  
9 gabapentin. And I believe you told me that you  
10 took it to help you with chronic pain.

11 A Uh-huh.

12 Q What chronic pain and what part of  
13 your body?

14 A My pelvic chronic pain.

15 Q You mentioned Migranal. You take  
16 that for migraines as needed; is that right?

17 A Uh-huh.

18 Q You're not suffering from a migraine  
19 now, are you?

20 A I had a migraine last night and I  
21 took the medication last night.

22 Q You mentioned nitrocurantoin [sic].

23 A Furantoin.

24 Q What's the -- what's that medication  
25 for?

1           A       It's for urinary tract infections.

2           Q       Is that an antibiotic?

3           A       Yes.

4           Q       You told me you take Xanax on  
5 occasion. What's the Xanax for?

6           A       I have a problem sleeping. I've  
7 taken Lunesta for a long time. Sometimes I wake  
8 up after four hours of sleep, I can't go back to  
9 sleep. If I take half of a Xanax, I usually can  
10 get six hours of sleep.

11          Q       How often do you take Xanax?

12          A       Once or twice a week.

13          Q       All right. You told me you take  
14 hyoscyamine. How -- why are you taking  
15 hyoscyamine?

16          A       I have a condition called Sphincter  
17 of Oddi Disorder, for several reasons, and I  
18 never know quite what's happening. It could be  
19 from fat. It could be from other foods, protein.  
20 The sphincter closes tightly, spasms, and then it  
21 creates a very painful reaction where the biliary  
22 fluids back up. And the hyoscyamine helps open  
23 that smooth muscle.

24          Q       Okay. You told me you take tramadol.  
25 What's tramadol for?

1           A       Tramadol was prescribed to me by my  
2       doctor in California for intercourse because it  
3       was very painful.

4           Q       Do you know -- how does tramadol  
5       affect you?

6           A       It relieves pain, but it's not --  
7       it's not totally -- it doesn't really address it,  
8       so I don't use it very often. I haven't filled  
9       my prescription in a long time, but I do have on  
10      hand in case things get out of hand with pain.

11          Q       Is it something you take before  
12      intercourse?

13          A       At the time it was prescribed, yes.

14          Q       And how do you use the -- is that the  
15      way you use it as well?

16          A       I don't use it that way anymore. Now  
17      I would use it in case I had a lot of pain after  
18      intercourse.

19          Q       All right. Would any of these  
20      medications, whether you've taken them or -- let  
21      me withdraw the question.

22                   The drugs you're on, would any of  
23      them affect your ability to give truthful, full  
24      and accurate testimony today?

25          A       No.

1 Q Okay. All right. So who is -- who's  
2 the doctor that prescribed the Lunesta?

3 A Dr. Dominic Roca.

4 Q Is he the doctor you sleep -- you  
5 treat with for your problems sleeping, your  
6 insomnia?

7 A Yes. I might add there he diagnosed  
8 me as having narcolepsy, not insomnia per se.

9 Q So your sleep disorder is narcolepsy?

10 A Uh-huh.

11 Q Where is Dr. Roca located?

12 A Stamford Hospital.

13 Q So is he at the hospital proper or is  
14 he in something called the Stamford Hospital  
15 Integrated Practices, SHIP?

16 MS. FUSCO: Objection to form.

17 If you know the answer to that, you  
18 can answer it.

19 THE WITNESS: I don't know the  
20 answer.

21 BY MR. ALLENTUCH:

22 Q Okay. How about the Plaquenil? Who  
23 prescribed that for you?

24 A Dr. Mark Litchman.

25 Q Could you spell his last name for the

1 court reporter?

2 A L I T-C-H-M-A-N.

3 Q And what kind of doctor is  
4 Dr. Litchman?

5 A Rheumatologist, immunologist.

6 Q Do you know the name of his practice?

7 A Fairfield County Allergy and  
8 Immunology.

9 Q When did you start treating with  
10 Dr. Litchman?

11 A About 2003.

12 Q You testified earlier that --  
13 withdrawn.

14 Is Mr. Litchman -- Dr. Litchman  
15 treating you for undifferentiated mixed  
16 connective tissue disease?

17 A Yes.

18 Q When did you first have symptoms from  
19 that illness?

20 A In 2003 or 2004.

21 Q What were the symptoms?

22 A To the best I can recall, I went to  
23 the practice to an allergist and I had enormous  
24 hives. And she -- he's in the practice. She  
25 sent me to him because I have a positive ANA.

1 Q What's an ANA?

2 A Antinuclear antibody.

3 Q Okay. What symptoms were you  
4 suffering from?

5 A Hives. And I had, you know, joint  
6 pain in my hands and my feet.

7 Q How did -- did that affect your  
8 ability to do the daily activities of life?

9 A The hives did.

10 Q How did it affect you?

11 A They itched a lot. They stayed a  
12 long time.

13 Q All right. Is there anything you  
14 couldn't do because of your -- in 2003 or '4  
15 because of this mixed connective tissue disease?

16 A I didn't have any -- I couldn't drink  
17 wine or anything like that. I mean, I carried on  
18 my daily activities pretty much.

19 Q How has your -- has the symptoms  
20 you've experienced with the mixed connective  
21 tissue disease changed from 2004 to today?

22 A They're better if I take the  
23 Plaquenil, which I do.

24 Q Is there a long-term diagnosis from  
25 this -- sorry. I will withdraw the question.



1                   Is there a long-term prognosis for  
2       this disease?

3                   A       I don't know.

4                   Q       Right. Do you know if it's  
5       degenerative?

6                   A       It is degenerative.

7                   Q       But right now, the symptoms are under  
8       control and don't affect you while you're on the  
9       Plaquenil; is that right?

10                  A       Correct.

11                  Q       Okay. Do you -- have you seen any  
12       doctors other than Dr. Litchman and his group for  
13       your mixed connective tissue disease?

14                  A       No.

15                  Q       Who prescribed the methiamine [sic]?

16                  A       Methenamine?

17                  Q       Methenamine. I'm sorry. I knew I  
18       wasn't going to get that right.

19                  A       That's all right. I'm more familiar  
20       with it than you are.

21                             Dr. Raz. Dr. Shlomo Raz.

22       S-H-L-O-M-O. Last name R-A-Z.

23                  Q       Are you still treating with Dr. Raz?

24                  A       Yes.

25                  Q       When was the last time you were at

1       UCLA Medical Center getting treatment from  
2       Dr. Raz or his practice?

3           A       Well, let me think about that for a  
4       second. It has been this year.

5                   I am going to have to say vaguely it  
6       was springtime. I don't know if it was March or  
7       April.

8           Q       And that's 2016?

9           A       Yes.

10          Q       All right. Who prescribed the  
11       Wellbutrin for you?

12          A       Dr. Leon Igel, I-G-E-L.

13                   And may I add to that? It was  
14       prescribed for me once before in 2011 and I took  
15       it for a brief time.

16          Q       Is Dr. Igel at a practice?

17          A       Yes. He's in Weil Cornell in  
18       New York. It is actually called The Weight Loss  
19       Clinic. He's an endocrinologist.

20                   MR. ALLENTUCH: I'm sorry. Could --  
21       could you just read back the end of the  
22       answer?

23                   (The Record was read back.)

24                   MR. ALLENTUCH: Right. Got it.

25                   That's the part I missed. Thank you.

1 BY MR. ALLENTUCH:

2 Q Why are you treating at The Weight  
3 Loss Clinic?

4 A Over the last five years I gained a  
5 lot of weight. I had several surgeries. I was  
6 inactive. I've tried to lose weight on my own  
7 and I was not successful with counting calories,  
8 et cetera. So I wanted to be as healthy as I  
9 could.

10 Q Sure.

11 You know, let me say this. I didn't  
12 say it at the beginning. Obviously we're going  
13 to spend a lot of time today going through all of  
14 your medical treatment and medications and, you  
15 know -- and I will probably be asking you  
16 somewhat personal questions. And I just want to  
17 be clear that I'm not -- no matter how I put  
18 them, I'm just trying to get information and find  
19 out.

20 A Okay.

21 Q It's really not a -- just take them  
22 as I'm trying to find out information. And so if  
23 I ask something in a way that it bothers you or  
24 something, it is certainly not my intention.  
25 Okay?

1           A     Understood.

2           Q     All right. And so what is the --  
3     what is the connection between Wellbutrin and  
4     weight loss issues, from your understanding?

5           A     Okay. It is my understanding. I'm  
6     not going to explain it as a medical person.

7                     He looked carefully at my history and  
8     what I had done to lose weight. He saw that I  
9     had taken Wellbutrin for a short time and I  
10    tolerated it. And I was also taking gabapentin,  
11    which causes weight gain for some people. So he  
12    said, Would you be willing to try the Wellbutrin  
13    because you seem depressed. Didn't do any  
14    questionnaires or anything. And you have chronic  
15    pain. And it also causes some people to lose  
16    weight.

17                    So I agreed to try that. So I was  
18    able to stop taking gabapentin all the time.

19           Q     And -- and do you feel -- do you feel  
20    depressed as you sit here today?

21           A     Relatively not.

22           Q     When you say "relatively," what do  
23    you mean?

24           A     Well, in the past I have been more  
25    so.

1 Q I see.

2 How does -- how do those feelings of  
3 depression manifest itself today?

4 A I don't -- I don't feel depressed  
5 today.

6 Q Okay. And just to be clear when I  
7 say "today," I don't mean just this morning,  
8 today. I mean in the present, generally. Does  
9 that change your answer at all?

10 MS. FUSCO: Well, I'm going to object  
11 to the ambiguity of that question. If you  
12 could be a little more specific because I  
13 thought you meant today as well.

14 BY MR. ALLENTUCH:

15 Q Over the last month or so have you  
16 felt depressed?

17 A No.

18 Q And would that be true the last six  
19 months or so, you haven't -- have you felt  
20 depressed?

21 A No.

22 Q Besides your endocrinologist did  
23 you -- at Weil Cornell, did you see anyone else  
24 for your depression, any other treaters?

25 A Well, that's why I mentioned -- I

1 will go back to 2011. My internist Dr. Judy Shea  
2 was seeing me, and this was post surgery in 2011.  
3 And she thought I had symptoms of depression. I  
4 was, like, weeping and, you know, just generally  
5 not getting better.

6 Q Okay. So other than Ms. Shea and  
7 your endocrinologist, you haven't treated with  
8 anyone else for depression; is that right?

9 A Correct.

10 Q All right. Who prescribed the  
11 metformin?

12 A Recently, yes.

13 Q Who prescribed that?

14 A Dr. Leon Igel.

15 Q All right. Who prescribed the  
16 gabapentin?

17 A Dr. Sue Zhou. Z-H-O-U.

18 Q Where does Dr. Zhou practice?

19 A In White Plains.

20 Q Is he part of a -- I'm sorry. Is she  
21 part of a group?

22 A No.

23 Q Do you know what kind of doctor  
24 Dr. Zhou is?

25 A She -- I believe she's a

1 urogynecologist.

2 Q All right. You told me that you're  
3 taking Migranal as a rescue medicine for  
4 migraines. Who prescribed that for you?

5 A Dr. Sarah Vollbracht at Montefiore.

6 Q Is that V-A-L-B-R-E-Q-U-E?

7 A I think it's V-O-L-L-B-R-E-C-H-T  
8 [sic].

9 Q I was not close on that spelling,  
10 okay.

11 How long have you had migraines?

12 A I started getting them in 2000.

13 Q Are they under control on medication?

14 A Yes.

15 Q And has that been true since you  
16 first sought treatment for them?

17 A No. I went through several different  
18 trial-and-error things at that clinic, but they  
19 found something that works.

20 Q When did -- was it Dr. Vollbracht  
21 figured out what would help treat your migraines?

22 A It was her teacher, Dr. Brian  
23 Grosberg, who has since left there.

24 Q When did Dr. Grosberg find a  
25 prescription for you that treated your migraines?

1 A Maybe 2009 or 2010.

2 Q And was that the Migranal that  
3 Dr. Grosberg prescribed?

4 A No.

5 Q What did Dr. Grosberg prescribe?

6 A He had me take a vitamin with  
7 magnesium in it, called Dolovent (ph.) And the  
8 rescue drug was Zomig. But over time it stopped  
9 working, and the Migranal is something that's --  
10 that I've had for the last year but I have much  
11 fewer migraines.

12 Q Who prescribed the nitrocurantoin?

13 A Furantoin. Dr. Raz.

14 Q Sorry.

15 How long have you been on this  
16 medication?

17 A Which medication?

18 Q Nitrocurantoin?

19 A Furantoin.

20 Q Oh, okay. I'm sorry. I wrote it  
21 down wrong.

22 A F-U-R-A-N-T-O-I-N.

23 Q Sorry's.

24 A It's okay.

25 Q Go ahead. How long have you been on



1       nitrofurantoin?

2               A       I think it was prescribed in 2014.

3                       Although I might add that I had taken  
4       it before with specific UTIs and we knew that it  
5       worked.

6               Q       Okay. Who prescribed the Xanax for  
7       you?

8               A       Dr. Roca.

9               Q       Could you spell the last name?

10              A       R-O-C-C-A [sic].

11              Q       Is Dr. Roca affiliated with a  
12       practice?

13              A       He's the doctor at the sleep clinic.

14              Q       Who prescribed the hyoscyamine for  
15       you?

16              A       Dr. Shea.

17              Q       And Dr. Shea is your internist; is  
18       that right?

19              A       Uh-huh.

20              Q       All right. And finally, who  
21       prescribed the tramadol for you?

22              A       Dr. Raz.

23              Q       All right.

24                       Did you do anything to prepare for  
25       today's deposition?

1 A I spoke to my lawyer.

2 Q Did you meet with your lawyer?

3 A Yes.

4 Q How -- would that be Jackie Fusco?

5 A Yes.

6 Q How about Mr. Leydon? Did you meet  
7 with him as well?

8 A No.

9 Q And how many times did you meet with  
10 Ms. Fusco?

11 A Twice.

12 Q How long did you meet with her for,  
13 roughly?

14 A A couple hours on -- last week and a  
15 couple hours yesterday.

16 Q Did you review any medical records in  
17 preparation for today?

18 MS. FUSCO: I'm going to object to  
19 the extent it's going to implicate any  
20 attorney/client privilege.

21 MR. ALLENTUCH: Okay.

22 MS. FUSCO: So it would be outside of  
23 anything that we discussed, did you review  
24 any medical records.

25 MR. ALLENTUCH: I think -- I'm just

1 asking if she looked at any medical  
2 records. That's not advice --

3 MS. FUSCO: Well, I'm just --

4 MR. ALLENTUCH: That's not advice or  
5 anything. It's just what --

6 MS. FUSCO: I know, but what you  
7 asked may implicate attorney/client  
8 privilege, if anything was reviewed during  
9 our meetings.

10 MR. ALLENTUCH: Okay. Well, let  
11 me -- are you directing her not to answer  
12 whether she reviewed medical records?

13 MS. FUSCO: No. I'm just -- I'm  
14 just -- you know, if, if something was  
15 exclusively done during our meetings, I  
16 would instruct her not to answer, okay.  
17 So, you know, maybe if you clarify --

18 MR. ALLENTUCH: I will break it into  
19 two pieces and you --

20 MS. FUSCO: Yeah, outside --

21 MR. ALLENTUCH: -- instruct her not  
22 to answer --

23 MS. FUSCO: -- outside of our  
24 discussions might be a little clearer, if  
25 you can phrase it that way.

1 MR. ALLENTUCH: I'm sorry. I know we  
2 were talking over each other there.  
3 But -- got it.

4 BY MR. ALLENTUCH:

5 Q Okay. Outside of your meeting with  
6 Ms. Fusco, did you review any medical records to  
7 review for today?

8 A No.

9 (Off the record.)

10 MR. ALLENTUCH: I'm not sure I got an  
11 answer to this last question so --

12 MS. FUSCO: Yes, you did.

13 MR. ALLENTUCH: Can you read back the  
14 last Q and A.

15 (The Record was read back.)

16 BY MR. ALLENTUCH:

17 Q Okay. In your meeting with  
18 Ms. Fusco, did you review any medical records in  
19 preparation for today?

20 MS. FUSCO: Objection. That's  
21 attorney/client privilege, and I instruct  
22 her not to answer.

23 INST

24 BY MR. ALLENTUCH:

25 Q And you're not going to answer,

1 right?

2 MS. FUSCO: Correct. She's not going  
3 to answer.

4 THE WITNESS: I will defer to her.

5 BY MR. ALLENTUCH:

6 Q Okay. I just need you to say that  
7 you're not going to answer and follow your  
8 attorney's direction. Just so the record is  
9 clear.

10 A Okay. At my attorney's advice, I'm  
11 not going to answer.

12 Q There you go. Thank you.  
13 What records did you review with  
14 Ms. Fusco?

15 MS. FUSCO: Objection.  
16 Attorney/client privilege. Do not answer  
17 any questions what we did -- or talked  
18 about, okay?

19 INST

20 BY MR. ALLENTUCH:

21 Q I just need you to say that you're  
22 not going to answer the question. That's all.

23 A Okay. I decline to answer on my  
24 attorney's advice.

25 Q All right. In preparation for today,

1 did you review any documents other than medical  
2 record?

3 MS. FUSCO: Object to the extent it  
4 may implicate attorney/client --

5 MR. ALLENTUCH: I will withdraw the  
6 question.

7 BY MR. ALLENTUCH:

8 Q Outside of your meeting with  
9 Ms. Fusco, did you review any documents to  
10 prepare for today?

11 A No.

12 Q In your meeting with Ms. Fusco, did  
13 you review any non-privileged documents to  
14 prepare for today?

15 MS. FUSCO: Objection.

16 Attorney/client privileged. Do not answer  
17 anything.

18 INST

19 THE WITNESS: I decline.

20 MS. FUSCO: Yeah. I'm going to  
21 instruct you not to answer anything. You  
22 don't have to -- you don't have to say  
23 that you decline. It's my objection. You  
24 don't answer. Okay?

25

1 INST

2

THE WITNESS: Okay.

3

4

MR. ALLENTUCH: Okay. I will -- just so you know, I will be claiming these. It will probably come up a few times.

5

6

7

8

9

10

MS. FUSCO: That's fine. It's attorney/client privilege. It's off limits. Communications between client and attorney are privileged. You don't get to go there.

11

12

MR. ALLENTUCH: I mean, there's no point in arguing.

13

14

15

16

17

18

19

20

I will tell you that these are not communications. So, for example, if you reviewed medical records on your -- as part of your work in the case and those showed up on a bill, right, the bill itself, for example, is not privileged. And the fact that, you know, you reviewed the medical records is not privileged.

21

22

23

24

MS. FUSCO: I don't understand what that means. But what went on between a client and their attorney, okay, any communications is privileged.

25

MR. ALLENTUCH: Right. And I'm not

1 asking about what you told her. I'm just  
2 asking the documents she reviewed. But I  
3 understand you disagree --

4 MS. FUSCO: That involved  
5 communication --

6 MR. ALLENTUCH: -- and you can -- we  
7 can take it up with the judge.

8 MS. FUSCO: But you can take it up  
9 with the judge, but we're done.

10 MR. ALLENTUCH: Well, I am going  
11 to -- I have to keep making a record.

12 MS. FUSCO: She is not going to  
13 answer.

14 MR. ALLENTUCH: So I am going to  
15 continue to --

16 MS. FUSCO: I am going to instruct  
17 her not to answer and not even to  
18 respond --

19 MR. ALLENTUCH: That's fine.

20 MS. FUSCO: -- on the record.

21 MR. ALLENTUCH: I just need to  
22 make -- I just need to make a record --

23 MS. FUSCO: That's fine.

24 MR. ALLENTUCH: -- so we can claim  
25 the questions. That's all.



1 MS. FUSCO: That's fine.

2 BY MR. ALLENTUCH:

3 Q All right. In preparation for  
4 today's deposition, outside of your meeting with  
5 Ms. Fusco, did you review your complaint in this  
6 case?

7 Do you need -- do you understand the  
8 question or do you need me to rephrase it?

9 A I don't understand the question.

10 Q Okay. All right.

11 A And I don't understand it in the  
12 context of you telling me not to answer.

13 Q Let me -- let me -- maybe I can --  
14 and Ms. Fusco can also explain this to you, if  
15 that would be easier. But she doesn't want --  
16 she doesn't feel it's appropriate for you to  
17 testify about anything that happened during her  
18 meeting with you. So I'm breaking it down into  
19 two pieces, things that you did outside of your  
20 meeting with her and things you did with your  
21 meeting with her. And so I'm going to go through  
22 a series of questions. I am going to ask you the  
23 same type of question when you met with Ms. Fusco  
24 and when you were not meeting with Ms. Fusco.

25 Does that make sense?

1           A       Yes.  Would you clarify that time  
2       frame you mean?

3           Q       Sure.  Well, I am -- really all I'm  
4       looking for is to prepare for today's deposition.  
5       That's what all these questions are directed at.

6           A       Okay.

7           Q       All right.  Do you know what a  
8       complaint is with respect to a lawsuit?

9           A       I think I do.

10          Q       All right.  Do you know whether a  
11       complaint in this case was filed on your behalf  
12       in the superior court?

13          A       I'm unclear.  I don't know if you and  
14       I have the same understanding.

15          Q       All right.

16          A       I don't want to answer something that  
17       I'm not sure of.

18          Q       Sure.  Sure.  Sure.

19          A       It's such different language than I'm  
20       accustomed to speaking.

21          Q       Why don't we mark this while we're  
22       waiting for the ventilation to shut off as  
23       Exhibit 1.

24

25

1 (Sherwood Exhibit Number 1 was marked  
2 for identification, as of this date.)

3 (Discussion off the record.)

4 MS. FUSCO: Maybe if we can just be  
5 clear that it's outside -- so that  
6 Ms. Sherwood understands, outside attorney  
7 communications.

8 MR. ALLENTUCH: Yeah, I'm going to go  
9 back and forth.

10 MS. FUSCO: Right. She reviewed it  
11 independently.

12 BY MR. ALLENTUCH:

13 Q Okay. Have you seen -- can you  
14 identify Exhibit 1 for me?

15 MS. FUSCO: I'm going to object to  
16 the extent you just put this in front of  
17 her. Can she kind of look at it and read  
18 it?

19 MR. ALLENTUCH: Sure. I -- if you  
20 need more time, take your time.

21 MS. FUSCO: And it is a legal  
22 document, so she may not be able to  
23 identify it.

24 MR. ALLENTUCH: Are you testifying,  
25 Jackie, here? I'm just asking if she can

1 identify it.

2 THE WITNESS: (Witness reviews  
3 document.)

4 It looks like the interrogatory that  
5 I filled out.

6 BY MR. ALLENTUCH:

7 Q Okay. Have you seen this document --  
8 it's called an Amended Complaint. That's the  
9 title on the first page. Is that right?

10 A Yes.

11 Q Have you seen the amended complaint,  
12 Exhibit 1, in this case before?

13 A Is it different from the one I filled  
14 out? I don't believe so.

15 Q Okay. Take as long as you need to  
16 look at it. If you need more time, I can wait,  
17 if that's something you need to do.

18 A Okay.

19 MS. FUSCO: Just off the record for a  
20 second.

21 (Off the record.)

22 THE WITNESS: (Witness reviews  
23 document.)

24 I don't believe I have seen this.

25

1 BY MR. ALLENTUCH:

2 Q Okay. All right. Thank you. You  
3 can give it back to me then. Thank you.

4 MR. ALLENTUCH: Let me just say,  
5 Jackie, I don't know if there's going to  
6 be more exhibits. There may be another  
7 one. But what I will do is when I get  
8 back to the office, I will e-mail them  
9 back to you and Shari.

10 MS. GOODSTEIN: Thank you.

11 MS. FUSCO: Okay. Thanks.

12 BY MR. ALLENTUCH:

13 Q All right. In preparation for today,  
14 did you -- withdrawn.

15 Do you remember answering discovery  
16 in this case?

17 A Is that the interrogatory?

18 Q That's a form of discovery, yes.

19 A Yes.

20 Q Okay. Did you review -- withdrawn.

21 Did you review your interrogatory  
22 responses with Ms. Fusco?

23 MS. FUSCO: Objection. That's  
24 attorney/client privilege. Do not answer  
25 it.

1 INST

2 BY MR. ALLENTUCH:

3 Q Okay. Did you -- outside of your  
4 meeting with Ms. Fusco in preparation for today,  
5 did you review your interrogatory answers?

6 A No.

7 Q All right. Did you talk with anyone  
8 else besides Ms. Fusco or Mr. Leydon about  
9 today's deposition?

10 MS. FUSCO: Well, I'm going to -- you  
11 mean within the law firm or outside of her  
12 attorneys?

13 MR. ALLENTUCH: I think it's did you  
14 talk with anyone else.

15 MS. FUSCO: Well, then I will object  
16 to the extent it may implicate  
17 attorney/client privilege.

18 MR. ALLENTUCH: Are you directing her  
19 not to answer the question?

20 MS. FUSCO: Well, I'm just going  
21 to -- if -- if there's somebody outside of  
22 the attorneys or the staff at this office  
23 that she spoke with, then she can answer  
24 it. Communications with attorney --

25 MR. ALLENTUCH: I think whether you

1 had -- whether someone had a communication  
2 or not, aside from the -- I'm not asking  
3 about the substance, whether a  
4 communication existed is not privileged.

5 MS. FUSCO: But that's why -- you  
6 know to the extent -- the objection is to  
7 the extent it may implicate.

8 MR. ALLENTUCH: Even if she talked  
9 with you. For example, she said she met  
10 with you and talked with you.

11 MS. FUSCO: That's right.

12 MR. ALLENTUCH: That's not  
13 privileged.

14 MS. FUSCO: That's true.

15 MR. ALLENTUCH: But I'm asking, did  
16 you talk with any -- anyone other than the  
17 two of you.

18 MS. FUSCO: That's why I --

19 MR. ALLENTUCH: And the answer is  
20 yes --

21 MS. FUSCO: Right.

22 MR. ALLENTUCH: -- or no, I didn't.

23 MS. FUSCO: I didn't instruct her not  
24 to answer. I said I object to the extent  
25 it implicates attorney/client privilege.

1           So if she can answer that outside of  
2           attorney privilege, then she can answer  
3           that.

4           MR. ALLENTUCH: All right.

5           MS. FUSCO: Okay?

6           BY MR. ALLENTUCH:

7           Q       So let me ask you the question again  
8           just so we're clear.

9                   Other than Ms. Fusco or Mr. Leydon.  
10          Did you speak with anyone else about today's  
11          deposition?

12          A       I spoke with my husband.

13          Q       What did you tell your husband about  
14          this deposition?

15          A       That it was happening and that I  
16          was -- had to just -- you know, he had to  
17          tolerate me being nervous or whatever, because it  
18          did make me nervous. I've never done this  
19          before.

20          Q       Did you talk -- what did your husband  
21          tell you in response?

22          A       He said you'll do fine.

23          Q       Did you talk about anything else  
24          about the deposition with him other than what  
25          you've just told me?



1           A       Well, I think that I went over the  
2       same issue a few times, that, you know, I had  
3       nervousness, my stomach was in knots or whatever.  
4       He wondered if he would have, you know, to come  
5       too. It's a big unknown for us.

6           Q       You told him to stay home?

7           A       Well, I didn't know I had an option,  
8       but I would have told him to stay home.

9           Q       Okay. Other than your husband, did  
10      you talk to anybody else about today's  
11      deposition, and Ms. Fusco and Mr. Leydon?

12          A       No.

13          Q       All right. I'm just going to ask you  
14      some basic background questions.

15                   Have -- have you gone by any other  
16      last name other than Sherwood?

17          A       Sometimes I go by my husband's last  
18      name which is Hoelscher, spelled  
19      H-O-E-L-S-C-H-E-R.

20          Q       So your -- either -- is it fair to  
21      say you're either known as Robin Hoelscher or  
22      Robin Sherwood --

23          A       Correct.

24          Q       -- is that right? Yes?

25          A       Yes.

1           Q     Okay. And I believe you -- you  
2           mentioned you live in Greenwich, Connecticut.  
3           How long have you lived at your current address?

4           A     Since 1996.

5           Q     And where did you live before that?

6           A     Millburn, New Jersey.

7           Q     Did you live in Millburn for a long  
8           time?

9           A     I think it was five years.

10          Q     And where did you live prior to 1991?

11          A     In Manhattan.

12          Q     How long did you live in Manhattan?

13          A     From '84 to -- from late '84 until  
14          '91, so 7 years.

15          Q     Where did you grow up?

16          A     Oklahoma.

17          Q     Where in Oklahoma?

18          A     A small town called Miami.

19          Q     You might want to spell that for the  
20          court reporter.

21          A     M-I-A-M-I.

22          Q     Pronounced a little differently than  
23          the city in Florida?

24          A     Yes.

25          Q     I see.

1                   And can you summarize your  
2           educational background for me?

3           A        Sure. I went to junior college in  
4           the town I grew up in, for two years. I moved to  
5           Oklahoma State, finished my BS degree in  
6           microbiology. Went on to do a year's internship  
7           in a hospital for another BS degree in medical  
8           technology. And I worked for a few years and  
9           went back to school for one year to study  
10          petroleum geology. I did not finish my master's.

11          Q        All right. And did you -- after you  
12          finished your degree at Oklahoma State, did you  
13          go in the job market?

14          A        Yes. After the internship in medical  
15          technology, I worked as a -- first a chemist in  
16          an industrial plant, and then I moved back in to  
17          hospital work as, you know, a clinical laboratory  
18          person, winding up in microbiology.

19          Q        All right. Can you tell me, you  
20          know, who you worked for and what your title was,  
21          just walk me forward.

22          A        Okay. Where do I start?

23          Q        Well, why don't we start when you got  
24          out of college -- withdrawn.

25                   Let's do it this way. Are you

1 currently working now?

2 A No.

3 Q When was the last time you were --  
4 you -- you held a job?

5 A 1992.

6 Q All right. And when did you get  
7 your -- your BS degree?

8 A The first one was 1978. The second  
9 one was 1979.

10 Q So why don't you just give me a  
11 general history about the positions you've held  
12 from '78 to '92.

13 A Okay. 79's -- I mean, I didn't work  
14 outside my internship. I was employed as a --  
15 you know, I don't know what the title was, but  
16 you're in the internship. You work 40 hours a  
17 week and you're in class.

18 Q Okay.

19 A So after that, after my degree and my  
20 license, I worked for about a year in a chemical  
21 plant as a chemist. And I decided that I --

22 Q Well, let me cut you off there.  
23 Who -- who did you work for?

24 A Universal Oil Products.

25 Q And what was your title?

1           A     Chemist.

2           Q     All right. And do you remember when  
3     you left Universal Oil?

4           A     Not exactly.

5           Q     Do you know generally what your next  
6     position was after you were a chemist at  
7     Universal Oil?

8           A     In general I can say that I was  
9     waiting for a job to open up at St. John's  
10    Hospital in Tulsa where I interned.

11          Q     All right. Did you leave Universal  
12    Oil and take a job at that hospital?

13          A     Yes.

14          Q     Do you remember when that was,  
15    roughly?

16          A     Approximately 1980.

17          Q     Okay. And what did you do at the  
18    hospital?

19          A     I worked in microbiology -- oh, wait.  
20    I have to backup a little bit.

21                     After Universal Oil Products, I  
22    worked in a temporary basis at another hospital  
23    called Hillcrest.

24          Q     What did you do at Hillcrest  
25    Hospital?

1           A       I worked in microbiology laboratory.

2           Q       When you say you worked in a  
3       microbiology laboratory, what kind of  
4       microbiology -- withdrawn.

5                   What were you doing in the  
6       microbiology laboratory at these two hospitals?

7           A       Culturing specimens from sick people,  
8       from surgery. And diagnosing, you know, coming  
9       up with identification, a pattern of sensitivity  
10      for microbes to help a doctor give proper  
11      treatment.

12          Q       So was it pathology work that you  
13      were doing? Is that a way to describe it?

14          A       It's called clinical pathology. The  
15      head of the lab is always a pathologist.

16          Q       All right. So you did pathology at  
17      both Hillcrest Hospital and the second hospital  
18      was called?

19          A       St. John's.

20          Q       St. John's?

21          A       Yes.

22          Q       Okay.

23          A       It was a coveted job in a coveted  
24      hospital.

25          Q       All right. And when did you leave

1 St. John's?

2 A Hillcrest?

3 Q You worked at -- okay. When did you  
4 leave Hillcrest then? We'll start there.

5 A From 1981.

6 Q All right. And then you left there  
7 to go to St. John's; is that right?

8 A Yes.

9 Q And when did you leave St. John's?

10 A 1984.

11 Q And what did -- what kind of -- where  
12 did you work next?

13 A Met-Life in New York City.

14 Q What did you do for Met-Life?

15 A I did -- I word in their laboratory  
16 processing claims -- I mean not claims,  
17 physicals, specimens from physicals for a person  
18 who is applying to get life insurance. We test  
19 it for nicotine, for substances in the urine.

20 Q Is -- and were you living in  
21 Manhattan at the time when you worked for  
22 Met-Life?

23 A Yes.

24 Q Is that where you met your husband?

25 A No. I met him when I went back to

1 college at Oklahoma State?

2 Q Okay. All right. How long did you  
3 work for Met-Life?

4 A About a year.

5 Q And so you left there in '85?

6 A I believe so.

7 Q And where did you work next?

8 A Sloan-Kettering.

9 Q And were you doing pathology work at  
10 Sloan-Kettering as well?

11 A Microbiology.

12 Q Same kind of work?

13 A Yes.

14 Q How long did you work for  
15 Sloan-Kettering?

16 A Until -- I think in 1989 I went  
17 part-time. And then I stopped working there in  
18 '90 or '91, to my -- to the best I can remember.

19 Q Okay. And what job did you take  
20 after you left Sloan-Kettering?

21 A I -- I worked as a headhunter for  
22 medical personnel, placing people in New York  
23 City hospitals.

24 Q All right. Do you remember the name  
25 of your employer?



1           A     Lab Force.

2           Q     I'm not sure if I -- I wrote it down,  
3     what I think you said. You said -- can you spell  
4     it?

5           A     Lab Force.

6           Q     Okay. Close.

7                     And was that also in Manhattan?

8           A     I was their only person. It was a  
9     Wooster, Massachusetts base company. They  
10    somehow found me, recruited me to take the  
11    Manhattan market. And I worked by myself from my  
12    home.

13          Q     All right. And is that -- was that  
14    the last job you had? Did you work there until  
15    1992?

16          A     Yes.

17          Q     Well, what made you decide not to  
18    take another position?

19          A     I had my third child and it was  
20    difficult to balance three children at home. And  
21    that was also my office. I had -- I worked long  
22    hours so I couldn't do it all.

23          Q     I -- you got -- as the father of  
24    three, I understand.

25                     All right. You told me you're

1 married to a man named Greg; is that right?

2 A Uh-huh.

3 Q When did you get married?

4 A 1984.

5 Q And Greg -- can I call him Greg? Is  
6 that all right?

7 A Uh-huh.

8 Q Or I can go to his -- Greg is fine.

9 A Greg is great.

10 MS. FUSCO: It's probably easier to  
11 spell Greg for the record.

12 MR. ALLENTUCH: Well, honestly, I  
13 didn't want to mispronounce your husband's  
14 last name, so I gravitated to Greg.

15 BY MR. ALLENTUCH:

16 Q So -- and Greg is the only man you've  
17 been married to; correct?

18 A Yes.

19 Q And when did you have your first  
20 child?

21 A 1986.

22 Q And boy? Girl?

23 A Boy.

24 Q Boy. What's your son's -- first  
25 son's name?

1 A Garrett.

2 Q Did you have Garrett by natural  
3 childbirth?

4 A I did.

5 Q Do you remember you delivered?

6 A St. Vincent's Hospital.

7 Q Down in Greenwich Village?

8 A Uh-huh.

9 Q It doesn't exist anymore, I believe.

10 A No.

11 Q Is that where you lived at the time,  
12 down in the Village?

13 A East Village.

14 MR. ALLENTUCH: Off the record for a  
15 second.

16 (Off the record.)

17 BY MR. ALLENTUCH:

18 Q Any complications with Garrett's  
19 birth?

20 A No.

21 Q Did you have any problems yourself  
22 after the pregnancy?

23 A No.

24 Q Let me just say, when I say  
25 "problems," I mean related to the pregnancy or

1 the delivery?

2 A I don't think so.

3 Q When was your next child born?

4 A In September of '89.

5 Q And what's your second child's name?

6 A Madison.

7 Q And was Madison delivered by natural  
8 childbirth as well?

9 A Yes.

10 Q And was that also at St. Vincent's  
11 Hospital?

12 A Yes.

13 Q Were there any complications  
14 associated with Madison's birth?

15 A No.

16 Q Did you have any problems related to  
17 the pregnancy or delivery after -- following  
18 Madison's birth, medical problems?

19 A No.

20 Q I have a feeling you told me you have  
21 more than three children; is that right -- how  
22 many children do you have?

23 A Four.

24 Q So when was your third child born?

25 A In 1992.

1 Q And what's your third child's name?

2 A Cicely, C-I-C-E-L-Y.

3 Q Was Cicely also born through natural  
4 childbirth?

5 A Yes.

6 Q And was Cicely also born at  
7 St. Vincent's Hospital?

8 A Yes.

9 Q And there -- were there any medical  
10 problems from Cicely's birth?

11 A Did I?

12 Q Yes. Did you have any problems  
13 during the birth?

14 A No.

15 Q Did -- after the birth, did you have  
16 any -- did you have any problems arising from  
17 giving birth or being pregnant?

18 A No.

19 Q Did Cicely have some problems arising  
20 from the birth?

21 A During the birth, she was called a  
22 fetus in distress. Everything turned out just  
23 fine.

24 Q Terrific.

25 A But it was, you know, a little

1 circusy.

2 Q When was your fourth child born?

3 A In 1998.

4 Q And what was your -- what's your  
5 fourth's child's name?

6 A Logan.

7 Q Logan just finished high school and  
8 is sending off --

9 A He's a senior in high school.

10 Q Senior in high school.

11 A Uh-huh.

12 Q And did you give -- again, have  
13 natural childbirth with Logan?

14 A Yes.

15 Q And were there any problems  
16 associated with the birth for you?

17 A No.

18 Q And how about after the birth, did  
19 you have any medical problems associated from the  
20 pregnancy or birth?

21 A Well, I started having prolapse of my  
22 uterus at that time during the pregnancy.

23 Q What time of year was -- withdrawn.  
24 What was -- when -- what's Logan's  
25 birthday?

1                   A       9/29.

2                   Q       You are a good parent. You know that  
3       cold.

4                   A       What?

5                   Q       I said you know your son's birthday  
6       cold.

7                   A       Oh, yes. Yes.

8                   Q       I was just...

9                            Okay. And so when did you first  
10       start experiencing symptoms from a prolapse?

11                   A       When I was pregnant with Logan, early  
12       on, maybe late February or March, I had a, you  
13       know -- I noticed that I was having, you know --  
14       I didn't know there was something wrong with the  
15       pregnancy, but I had heaviness and it felt like,  
16       you know, the bottom was dropping out, so to  
17       speak.

18                   Q       Was -- was Dr. Komarynsky your  
19       obstetrician at the time?

20                   A       Yes.

21                   Q       Did you talk to Dr. Komarynsky about  
22       your -- withdrawn.

23                            What was your understanding at that  
24       time of a prolapse? What did it mean to you?

25                   A       It didn't mean very much. I think

1 she -- I think she gave me a pessary at that  
2 time, which I used for a short time. But as I  
3 became more pregnant and the baby was higher, I  
4 wasn't having prolapse until after he was born.

5 Q I see. So as the pregnancy went on,  
6 the symptoms ceased, is that what you're telling  
7 me?

8 A Yes.

9 Q Did you have a discussion with  
10 Dr. Komarynsky about the prolapse symptoms you  
11 were experiencing at that time?

12 A At which time?

13 Q In the winter and spring of 1998.

14 A During the pregnancy?

15 MS. FUSCO: I'm going to object --

16 MR. ALLENTUCH: During the pregnancy.

17 MS. FUSCO: -- it's a little -- oh,

18 okay. During the pregnancy.

19 THE WITNESS: Yes. Right away.

20 BY MR. ALLENTUCH:

21 Q And what did Dr. Komarynsky tell you?

22 A I can't recall exactly what she said.

23 I know that she reassured me and said, this

24 happens. Your baby will be fine.

25 Q Did she prescribe a course of



1 treatment other than the pessary for you?

2 A No.

3 Q No. Okay.

4 After Logan was born, you had  
5 prolapse -- symptoms from a prolapse again; is  
6 that right?

7 A Uh-huh.

8 Q When did that happen -- start  
9 happening?

10 A I think -- I don't remember. But in  
11 general, pretty much soon after I was healed from  
12 the birth.

13 Q Okay. So the last -- fair to say the  
14 last few months of 1998 you started again  
15 experiencing symptoms from a prolapse; is that  
16 right?

17 A I don't think I can be accurate. I  
18 think the medical records would show that better.

19 Q All right. Did you meet with  
20 Dr. Komarynsky to discuss a potential course of  
21 treatment --

22 A Yes.

23 Q -- for prolapse?

24 Yes?

25 A Yes.

1           Q     And what did Dr. Komarynsky tell you  
2     at that time?

3           A     She prescribed a pessary for me.

4           Q     What is a pessary?

5           A     I think there are different forms,  
6     but the one that I had was like a rubber coated  
7     flexible metal ring. It's fitted to the size of  
8     your body. And you place it and leave it there  
9     for a time and it expands and just acts as a  
10    mechanical support.

11          Q     Did Dr. Komarynsky tell you whether  
12    the pessary was supposed to cure you of your  
13    prolapse? What did he say about the pessary?

14          A     She.

15          Q     She. I'm sorry. What did she say  
16    about the pessary?

17          A     I believe she described it as a  
18    treatment but not a cure. I was not under the  
19    impression that I was going to be cured if I used  
20    this, but I would be able to function.

21          Q     Did the pessary work for you as a  
22    treatment?

23          A     It did for a long time.

24          Q     How did it help you?

25          A     It kept my uterus suspended up inside

1 of me.

2 Q And were you having any symptoms when  
3 you used the pessary in 1998 and 1999, you know,  
4 around that time period?

5 MS. FUSCO: Objection to form.

6 BY MR. ALLENTUCH:

7 Q You can go ahead and answer.

8 MS. FUSCO: If you can.

9 THE WITNESS: I'm finding the  
10 question a little vague and I can't  
11 remember specifically.

12 BY MR. ALLENTUCH:

13 Q I will rephrase the question.

14 A Okay. Yes.

15 Q When the pessary was prescribed for  
16 you at -- sometime after you gave birth to your  
17 son --

18 A Yes.

19 Q -- and you started using it, were you  
20 still experiencing symptoms from the prolapse?

21 A Not when I wore it.

22 Q And you wore it all the time; is that  
23 right?

24 A Mostly all the time. Sometimes I  
25 would take it out to wash it or if it was time

1       for my menses. I kind of didn't like it in  
2       there.

3               Q       Sure.

4                       Did -- at that time were you having  
5       intercourse with your husband?

6               A       Yes.

7               Q       Okay. And you weren't wearing the --  
8       the pessary when you had intercourse; is that  
9       right?

10              A       I was told that I could, but it  
11       wasn't preferable so I usually took it out.

12              Q       Was it uncomfortable to wear the  
13       pessary during intercourse?

14              A       Yes.

15              Q       Were you having regular intercourse  
16       with your husband after your son was born around  
17       the time the pessary was prescribed?

18                       MS. FUSCO: Objection to form.

19       BY MR. ALLENTUCH:

20              Q       Okay. I will rephrase it -- do you  
21       understand the question? I -- I can --

22              A       Well, I was going to ask you what do  
23       you mean by "regular."

24              Q       Regular. Yeah. Might I suspect  
25       "regular" in that department has different

1 meaning at different times of life, and whether  
2 you have four children at home.

3 MS. FUSCO: And from person to  
4 person.

5 MR. ALLENTUCH: Right. There you go.

6 MS. FUSCO: It's a relative term.

7 THE WITNESS: Do you mean  
8 "frequency"?

9 BY MR. ALLENTUCH:

10 Q Yes. I'm talking about frequency.  
11 Were you having intercourse with your husband on  
12 a weekly basis --

13 A Yes.

14 Q -- after your son was delivered and  
15 you were -- the pessary was prescribed?

16 A Yes.

17 Q And was it painful?

18 A I don't think so.

19 Q And I understand it wasn't painful.  
20 How -- was it uncomfortable to have intercourse  
21 with your husband around the time the pessary was  
22 prescribed because of the prolapse?

23 MS. FUSCO: Objection to form.

24 BY MR. ALLENTUCH:

25 Q You can go ahead and answer if you --

1           A       What do you mean "uncomfortable"?

2           Q       Well, did you feel discomfort when  
3           you were having sex with your husband because of  
4           the prolapse?

5           A       Well, I had to do preparation. I  
6           had, you know -- I considered it, you know,  
7           messy. I had to get the pessary out. I had to  
8           use -- you know, I had to put things sort of back  
9           in place and use lubrication, which was a new  
10          thing for me.

11                    So it was a -- you know, it had  
12          evolved from when we first married, but -- so I  
13          might have been bothered by all the things I had  
14          to do, but it would -- I would say it was  
15          mutually satisfaction, intercourse.

16          Q       All right. Right. So you weren't  
17          feeling any mild discomfort or mild pain of any  
18          kind at that time when you had intercourse with  
19          your husband; is that right?

20                   MS. FUSCO: Objection.

21          BY MR. ALLENTUCH:

22          Q       And the time I'm talking about is  
23          again the time -- around the time the pessary was  
24          prescribed and after your son was born --

25                   MS. FUSCO: Objection.

1 BY MR. ALLENTUCH:

2 Q -- your son Logan. Is that clarified  
3 for you?

4 MS. FUSCO: Objection.

5 THE WITNESS: Maybe you could ask  
6 it --

7 BY MR. ALLENTUCH:

8 Q Let me -- all right. Let me rephrase  
9 the question.

10 A Like you said, I don't want to answer  
11 something --

12 Q Sure. I understand.

13 So can we agree we're talking about  
14 somewhere in 1999, is that when all this  
15 happened, the pessary was prescribed and you were  
16 wearing it and it was generally working for you?

17 A It was generally working for me,  
18 okay, yes.

19 Q That was 1999; is that right? Yes?

20 A Yes.

21 Q So in 1999, when you're having sex  
22 with your husband, other than the inconvenience  
23 of having to take the pessary out and use  
24 lubrication and it couldn't be as spontaneous as  
25 you had been previously, you weren't -- you

1        didn't feel any discomfort when you were having  
2        sex with your husband; correct?

3            A        I don't recall it being a problem.

4            Q        All right. Okay. Other -- did you  
5        have any other symptoms associated with the  
6        prolapse -- withdrawn.

7                    Did you have any symptoms associated  
8        with the prolapse when you were wearing the  
9        pessary? Like, did you have any unusual urinary  
10      tract infections, for example?

11                   MS. FUSCO: Objection.

12                   MR. ALLENTUCH: Withdrawn.

13        BY MR. ALLENTUCH:

14            Q        Did -- when you started wearing the  
15      pessary did you have an increase -- notice an  
16      increase in the number of urinary tract  
17      infections that you would get?

18                   MS. FUSCO: Objection.

19        BY MR. ALLENTUCH:

20            Q        When she objects to form, you can go  
21      ahead and answer.

22                   MS. FUSCO: Well, I think I'm also  
23      going to object to foundation. I don't  
24      know when urinary tract infections came in  
25      at this period of time, so I think you



1                   just assumed that. So that's why I think  
2                   there's a little confusion.

3           BY MR. ALLENTUCH:

4                   Q       Are you confused? Do you need me to  
5                   rephrase the question?

6                             MS. FUSCO: Look at her.

7                             THE WITNESS: I don't recall that  
8                   being a problem at that time.

9           BY MR. ALLENTUCH:

10                   Q       All right. So you don't recall in  
11                   1999 having a greater number of urinary tract  
12                   infections; is that correct?

13                             A       I do not recall that.

14                   Q       All right. And you don't -- do you  
15                   recall having -- suffering from any kind of  
16                   vaginal itching or burning at that time? Again,  
17                   in 1999.

18                             A       Not at that time.

19                   Q       All right. Did -- so did there come  
20                   a time where you started to feel symptoms from  
21                   the prolapse even with the pessary, after 1999?

22                             MS. FUSCO: Objection to form.

23                             THE WITNESS: Could you be more  
24                   specific about after 1999? That's a  
25                   little bit long.

1 BY MR. ALLENTUCH:

2 Q How about in 2000, did you have any  
3 symptoms from the -- did you start feeling any  
4 symptoms from the prolapse while you were wearing  
5 a pessary?

6 A I don't recall in 2000.

7 Q Okay. Did the pessary stop working  
8 for you at some time in dealing with the symptoms  
9 of the prolapse?

10 A Yes. The pessary became less  
11 effective for my symptoms.

12 Q Do you remember when that started  
13 happening?

14 A Not exactly.

15 Q Do you remember generally when that  
16 started happening?

17 A Generally, I would say one or two  
18 years before I sought different treatment.

19 Q So would that have been somewhere in  
20 the 2004 range?

21 A It would be a guess to say when,  
22 unless I looked at some chart or you looked at  
23 some chart.

24 Q Okay. Well, the surgery --

25 A Somewhere in there I saw

1 Dr. Komarynsky and I said, you know, this is  
2 working less well. I think we tried a different  
3 pessary. But with the pessary out, I believe my  
4 scores, or whatever they do to rate your  
5 prolapse, were getting worse.

6 Q Okay. So can you -- you had -- you  
7 had the Ethicon Prolift implanted in April 2006  
8 at Stamford Hospital; is that right?

9 A Yes.

10 Q Okay. And so sometime between 1999  
11 and April 2006, the pessary became ineffective;  
12 is that right, to treat your prolapse?

13 A I'm not sure what the diagnosis would  
14 have been. It was less satisfactory for me. I  
15 was having a harder time wearing it all the time.  
16 It did start interfering with bowel movements as  
17 mechanical in -- I was having to take it out, put  
18 it in all the time. I dropped it in the toilet  
19 once. I had to get a new one. It was just  
20 annoying.

21 Q All right. So tell me about the  
22 symptoms that you were -- I understand it's  
23 somewhere in that '99 to beginning of 2006 time  
24 period. Tell me what your symptoms -- can you  
25 describe your symptoms for me from the prolapse

1 as they got worse?

2 A Well, I was bothered by the problems  
3 I was having with -- I felt pressure from the  
4 pessary in my bladder, and I felt like I could  
5 not have a complete bowel movement with the  
6 pessary in place. And I also felt like taking it  
7 out and putting it in was giving me irritation in  
8 the vagina and just feeling kind of  
9 uncomfortable. I was more aware of it being in  
10 me. In the beginning, I wasn't so aware.

11 Q You said you couldn't have a complete  
12 bowel movement. How was it effecting your --  
13 were you just not able to press to have a  
14 complete bowel movement with the pessary in? Was  
15 that the problem?

16 A Yes. When I would try to take --  
17 take the pessary out, I could feel, you know,  
18 that things were backed up behind it. If I took  
19 it out, you know, and I spent the time, I could  
20 have a normal bowel movement.

21 Q Okay. So -- I'm sorry. So without  
22 the pessary you could have a bowel movement but  
23 wearing it you couldn't; is that right?

24 A I wouldn't say I couldn't. I would  
25 say it was difficult.

1 Q Difficult, okay.

2 A And I had always been told never to  
3 strain with my prolapse.

4 Q Dr. Komarynsky told you that?

5 A Yes.

6 Q Other than Dr. Komarynsky, were you  
7 treating with anyone else for issues related to  
8 your prolapse in the '99 to 2005 period?

9 A Relating to prolapse, no, or any  
10 other gynecological issue.

11 Q Did you seek an opinion from any  
12 other gynecologist other than Dr. Komarynsky  
13 about the prolapse during the '99 to 2005 period?

14 A I did see one other doctor. I don't  
15 recall her name. Dr. Komarynsky -- you know,  
16 when I complained about, you know, what do we do  
17 now. I mean, I can't see this working for the  
18 rest of my life. So she explained to me that she  
19 could do a hysterectomy but it wouldn't  
20 necessarily solved my problem because the  
21 prolapse was more than just my uterus, it was the  
22 whole structure of my vagina that was sagging.

23 So she didn't offer hysterectomy as  
24 the end-all. And she said, you know, you can  
25 check with anyone else. She was open to that.

1        So I saw another woman doctor who was pretty  
2        gung-ho about doing a hysterectomy. She  
3        didn't -- I don't even remember her. I just  
4        thought she didn't seem to be a person I wanted  
5        to jump in to practice with.

6                Q        Sure.

7                        Do you remember where this other  
8        doctor was located?

9                A        In Stamford.

10               Q        And was she also a gynecologist?

11               A        Uh-huh.

12               Q        Do you remember what practice she was  
13        at?

14               A        I don't. I can guess that maybe her  
15        name was Gray (ph.) but I don't really remember.

16               Q        Do you have a first name?

17               A        (Witness shakes head.)

18                        Sometimes you just don't like a  
19        person.

20               Q        I'm sorry?

21               A        Sometimes you just, you know, don't  
22        feel you've met your solution.

23               Q        Do you remember where -- and I  
24        understand you're not sure about her name, but  
25        I'm going to call her Dr. Gray just so we have a

1 common point of reference. Do you remember where  
2 Dr. Gray's office was located in Stamford? What  
3 street maybe?

4 A (Witness shakes head.)

5 Q What part of Stamford, do you  
6 remember that -- you shook your head no.

7 A No, I don't remember.

8 Q But Dr. Gray was affiliated with a  
9 group; is that right?

10 A I think she was in single practice.

11 Q Okay.

12 MS. FUSCO: Just off the record for a  
13 second.

14 (Off the record.)

15 MR. ALLENTUCH: Back on the record.

16 BY MR. ALLENTUCH:

17 Q All right. Do you remember when you  
18 saw Dr. Gray to get a second opinion?

19 A I can guess. Logically it would be  
20 sometime in 2005.

21 Q All right. So it was not long before  
22 you had the Prolift surgery; is that right?

23 A Uh-huh.

24 Q That was a yes?

25 A Yes. Yes.

1           Q     Okay. And is it fair that the only  
2     thing you remember about your visit with Dr. Gray  
3     is that she recommended a hysterectomy; is that  
4     right?

5           A     Yes. A pretty radical surgery, if I  
6     remember correctly.

7           Q     Well, why was it radical?

8           A     If I recall correctly, it seemed like  
9     she wanted to do an abdominal hysterectomy and  
10    take out my ovaries too. I don't know if it was  
11    radical. It seemed radical to me.

12          Q     Sure. Sure.

13                So her -- Dr. Gray's proposed  
14    treatment was to take out your ovaries and  
15    uterus; is that right?

16          A     To the best I recall.

17          Q     All right. During the -- again, the  
18    time frame '99 to 2005, were the symptoms from  
19    the Prolift steadily -- sorry. Withdraw the  
20    question.

21                During the period '99 to 2005, were  
22    the symptoms from the prolapse subtly worsening?

23          A     I could say incrementally worsening.  
24    I was able to deal with it up to a certain point.  
25    It was getting in my way.



1                   And maybe I'm not supposed to keep  
2           talking, but it was -- things where I was  
3           choosing not to do, activities with my family.

4           Q       What -- when you could say you could  
5           deal with it up to a certain point, was it  
6           painful?

7           A       No, I don't remember it being  
8           painful. It was just disgusting.

9           Q       You felt it was disgusting.

10          A       Uh-huh.

11          Q       And how did it -- did it make you  
12          feel bad about yourself, or I should say badly  
13          about yourself?

14          A       No. I felt badly about my prolapse  
15          but not about myself.

16          Q       And you said you chose not to do  
17          activities with your family, what did you mean?

18          A       I just -- you know, my family is very  
19          active. They like to ski. They like to hike.  
20          They like to do adventurous things. So I would  
21          just stay behind. You know, I would stay home.  
22          I would say, yes, I'm going skiing, but I  
23          wouldn't, because I just felt not quite right,  
24          heavy in the pelvic area. Enough so that I asked  
25          my doctor if there were other solutions at some

1 point, and I don't know which visit.

2 Q So just so I understand this, you  
3 could do these activities but you felt discomfort  
4 when doing them. Is that why you chose not to do  
5 them?

6 A I remember one day I did go skiing  
7 with my family, and I felt like the pessary was  
8 at the bottom. And it was like -- you know, that  
9 I was going to have to take it out or it was  
10 going to fall out. And then I was unsure about,  
11 you know, if I could hurt myself if I fell. So I  
12 just started thinking, I have to ask questions  
13 about where do we go from here.

14 Q And when you were skiing and you felt  
15 like the pessary was going to come out, were  
16 you -- did you feel discomfort as well?

17 A Yes, I think it was discomfort.

18 Q Did you talk about these problems you  
19 were having, with your husband?

20 A Somewhat.

21 Q When you say "somewhat," what do you  
22 mean?

23 A Well, I wouldn't tell him everything  
24 all the time, but, you know, I think he  
25 gradually, you know, knew that things were

1 getting worse.

2 In the beginning I thought it was  
3 great. It worked.

4 Q So in the period '99 to 2005, was the  
5 prolapse affecting your sex life as it got worse?

6 A I probably became less reluctant to  
7 initiate sex or to --

8 Q Sorry. More reluctant?

9 A A little more reluctant because I  
10 just didn't feel very attractive.

11 Q And so the frequency of the  
12 intercourse you had with your husband declined  
13 over that '99 to 2005 period; is that right?

14 A I didn't really say that. I don't  
15 know if it declined. I think we've always been  
16 kind of regular scheduled -- you know, kept a  
17 regular intervals.

18 Q That's been characteristic throughout  
19 your marriage, you've had regular sex.

20 A Yes.

21 Q But you felt more reluctant and not  
22 attractive, and this is sort of part of what you  
23 said before, about feeling that it was  
24 disgusting; is that right?

25 A Yeah. I didn't feel very playful.

1           Q     All right. I think you told me a  
2     moment ago that at some point you talked to  
3     Dr. Komarynsky about other potential options to  
4     deal with your prolapse; is that right?

5           A     Yeah. I mean, I saw her every year,  
6     or if I had some issue. And it wasn't, I don't  
7     think, on one specific day, you know. We just  
8     talked about -- at my visits, how that was  
9     working. And, you know, on one -- we got to a  
10    point where she agreed that it wasn't working as  
11    well.

12          Q     So is it fair to say, as you got  
13    closer and closer to 2006, at your regular visits  
14    you voiced more and more dissatisfaction with the  
15    pessary as a treatment option; is that right?

16          A     Yes. I was getting abrasions sort of  
17    in my vagina from the pessary because it wasn't  
18    staying where it should and it was riding lower  
19    than it should in a place where it was very  
20    irritating to the epithelium.

21          Q     And were the abrasions painful or  
22    uncomfortable?

23          A     I would say uncomfortable. I don't  
24    really like to say painful.

25          Q     You don't like to say painful because

1       you feel like it's -- is it because you feel like  
2       you're -- withdrawn.

3                   Are you uncomfortable with the word  
4       "painful" or is it just not a good --

5           A       Yeah, I don't like the word.

6           Q       Is there a better word I can use?

7           A       No, it's fine. It's fine. I  
8       understand you and I can -- you know, I worked in  
9       hospitals. I think painful is like when you come  
10      out of surgery and you're blind with pain.

11          Q       I see. Okay.

12                   So do you remember having a  
13      conversation with Dr. Komarynsky sometime in 2004  
14      or 2005 where you asked her, what are my other  
15      options?

16          A       Uh-huh. I can't tell you the month,  
17      but I had this conversation. We finally got to  
18      it. And she said, I think you have to get this  
19      fixed. And I would like for you to go see, you  
20      know, Dr. Hines. He's the head of urogynecology.  
21      He's a bright guy. He can do things I can't.

22          Q       And that conversation occurred in  
23      2005?

24          A       It must have, but I don't know for  
25      certain.

1           Q     Well, all right. Let's work  
2 backwards. The surgery was in April of 2006,  
3 right?

4           A     Uh-huh.

5           Q     Is that why you assumed that your --  
6 Dr. Komarynsky recommended you go see Dr. Hines,  
7 that conversation was sometime in 2005?

8           A     Yes.

9           Q     And was that about the same time you  
10 went to see Dr. Gray to get a second opinion?

11          A     Yes.

12          Q     All right.

13          A     That's reasonable.

14          Q     What's the difference between a  
15 gynecologist and a urogynecologist?

16               MS. FUSCO: Objection.

17               If you know you can answer.

18               THE WITNESS: I can tell you my  
19 belief is that a urogynecologist has more  
20 experience and training with the urinary  
21 tract and the full pelvis rather than  
22 training more towards women's issues with  
23 childbirth and, you know, yeast  
24 infections.

25

1 BY MR. ALLENTUCH:

2 Q Do you remember going to see  
3 Dr. Hines?

4 A Uh-huh. Yes.

5 Q Do you remember when that was?

6 A January of 2006.

7 Q What do you remember about your visit  
8 with Dr. Hines in January 2006?

9 A I mostly remember -- I'm pretty sure  
10 that he examined me and looked at the records  
11 from Dr. Komarynsky, although I don't really  
12 remember the exam. But in his office we had a  
13 conversation and he recommended that I be fixed  
14 with mesh.

15 I had not heard of it before. I had  
16 heard of other surgery where, you know, you would  
17 have your ligaments reattached or whatever. And  
18 I didn't really know exactly what my problem was,  
19 so I'm speaking in generalities. But he  
20 presented me that the only option for me was  
21 mesh. And that it had wonderful results in  
22 people.

23 Q All right. So at the time that you  
24 went to see Dr. Hines you had heard of -- that  
25 you could deal with or treat prolapse using

1 natural tissue; is that right?

2 MS. FUSCO: Objection.

3 THE WITNESS: No.

4 BY MR. ALLENTUCH:

5 Q Maybe you can -- maybe I -- you know,  
6 I think you told me you had heard of ligaments  
7 being used, and I'm just trying to understand  
8 what you meant by that. That's really what I'm  
9 trying -- I want to understand that part of your  
10 answer.

11 A Okay. In general, I guess I thought  
12 you could just sew my vagina back to where it  
13 belonged in the first place.

14 Q Okay. So is that what you meant when  
15 you said ligaments being reattached?

16 A (Witness nods head.)

17 MS. FUSCO: Loud. You have to answer  
18 out loud.

19 THE WITNESS: Yes.

20 MS. FUSCO: I'm just reminding you.

21 BY MR. ALLENTUCH:

22 Q Do you need a minute? Are you okay?

23 A Yeah, I'm okay. I just need to  
24 shift.

25 Q When you saw Dr. Hines in January of



1           2006, how old were you?

2                   A       You want me to do the math?

3                           I believe I was 49.

4                   Q       By the way, happy birthday.

5                   A       Thank you.

6                   Q       Did Dr. Hines talk to you about  
7       whether your age was a factor in recommending a  
8       particular treatment?

9                           MS. FUSCO:  Objection.

10           BY MR. ALLENTUCH:

11                   Q       Was that part of your discussion with  
12       Dr. Hines, your age and what treatment was  
13       appropriate for someone of your age?

14                           MS. FUSCO:  Objection.

15                           You can answer.

16                           THE WITNESS:  Oh, okay.

17                           In the context that he said, you seem  
18       like a young person and you have an active  
19       family, this is a good option for you.

20           BY MR. ALLENTUCH:

21                   Q       What questions did you ask him at  
22       the -- when you met with him?

23                   A       Well, I asked him how many surgeries  
24       he had done.  And he told me that he did them  
25       every week.  They were very popular and they help

1 women a lot. He told me it was a much better  
2 option than what had ever been done before and it  
3 was the only thing that he recommended.

4 I asked him if his patients had had  
5 any problems, and he said -- I can't remember  
6 verbatim, but he overcame my fear or objection.  
7 He seemed very knowledgeable about what he was  
8 telling me. And I was, you know, internalizing  
9 something new, but since he was the expert, you  
10 know, I believed the data that he was giving me,  
11 which wasn't any data really.

12 Q Right.

13 A I didn't feel like, you know, looking  
14 backwards that, no, there were any statistics  
15 discussed.

16 Q Did you -- I mean, you're -- did you  
17 do any research after you met with Dr. Hines  
18 about any of the things he told you?

19 A I tried to, but there was no other  
20 information available.

21 Q What did you do to --

22 A I looked on the Internet.

23 Q Did you -- so you ran Google  
24 searches; is that right?

25 A Uh-huh.

1 Q What kind of things did you search?

2 A "Ethicon Prolift."

3 Q Do you remember any other searches  
4 you did?

5 A I don't.

6 Q Do you know whether you did searches  
7 about other treatments for prolapse?

8 A I probably looked for traditional  
9 methods.

10 Q So what did you do with the  
11 information you found on the Internet?

12 A About the prolapse?

13 Q Or from the other Google searches you  
14 ran.

15 A Mostly what I found about the Prolift  
16 was the brochure, or a version of that that I  
17 left the office with. And it seemed like a  
18 simpler surgery. And I felt like I had to trust  
19 Dr. Hines.

20 I mean, he was the head of  
21 urogynecology in a teaching hospital. He had a  
22 resident. You know, I went to him through a  
23 pathway of trust from my doctor, who I still  
24 love. And, I mean, I couldn't fix myself. So I  
25 made a conclusion, I guess, that he was right and

1       that this was in my best interest to trust him.

2               Q       You said "it seemed like a simpler  
3       surgery" a minute ago. What did you mean by  
4       that?

5               A       Well, I recall looking at one surgery  
6       which was like an abdominal fix, and that seemed  
7       like a terrible idea to me to be cut open. And  
8       Dr. Hines proposed, you know, a transvaginal  
9       surgery that I would not have scars and it would  
10      be a minimally invasive procedure and that my  
11      recovery would be very quick.

12                    I wouldn't say that I really  
13      understood the other surgery because I'm not a  
14      surgeon and, you know, it's very complicated when  
15      you -- I'm not even sure there were pictures on  
16      the Internet at that time.

17               Q       Do you remember -- withdrawn.

18                    So you had a discussion with  
19      Dr. Hines. He examined you. He looked at  
20      your -- at Dr. Komarynsky's records. He  
21      recommended mesh surgery using the Ethicon  
22      Prolift, and he gave you a pamphlet he also told  
23      you about the number of surgeries he did.

24               A       Uh-huh.

25               Q       Is there anything else you remember

1       besides those things, about your visit with  
2       Dr. Hines in January of 2006?

3           A       Well, I remember that he entertained  
4       my questions. You know, even if they were  
5       elementary, he spent time with me. He overcame  
6       all of my objections, and he did put me at ease.

7           Q       When you said "overcame your  
8       objections," do you mean he answered your  
9       questions or concerns?

10          A       Yes. Uh-huh.

11          Q       Is that what you mean? Yes?

12          A       Yes.

13          Q       Is it your claim that Dr. Hines did  
14       something wrong in that January 2006 office visit  
15       you had with him?

16                   MS. FUSCO: Objection to form.

17       BY MR. ALLENTUCH:

18          Q       You can go ahead and answer.

19                   MS. FUSCO: If you understand the  
20       question.

21                   THE WITNESS: Will you say it again?

22       BY MR. ALLENTUCH:

23          Q       Sure.

24                   Is it your belief or claim that  
25       Dr. Hines did something wrong in that January

1 2006 office visit you had with him?

2 MS. FUSCO: Objection to form.

3 THE WITNESS: I don't know if he did  
4 something wrong. I have often felt that  
5 he might have had information that he did  
6 not give me.

7 BY MR. ALLENTUCH:

8 Q Is there a basis for that belief, or  
9 why do you -- what makes you say that?

10           A       Well, he did not tell me that the  
11 mesh was not FDA approved. He didn't tell me  
12 that he was new to doing the surgery because it  
13 had only been done for a short time in the  
14 country. I recall him saying that mesh had been  
15 used for a very long time successfully in other  
16 kinds of surgeries.

17 Q And do you believe that wasn't  
18 accurate, that mesh --

19           A        I don't. I believe that it was  
20           probably accurate that it was used. I know that  
21           people have abdominal or heart surgeries and  
22           sometimes they have mesh to keep the wound  
23           closed. I had heard of that.

24 Q Did you know that 99 percent of all  
25 products out there are not FDA approved?

1 MS. FUSCO: Objection to form.

2 BY MR. ALLENTUCH:

3 Q You can go ahead and answer.

4 MS. FUSCO: If you can. If you know  
5 what the question is.

6 THE WITNESS: I'm not sure what -- I  
7 don't know what kind of -- what you mean,  
8 "products."

9 BY MR. ALLENTUCH:

10 Q Products on the market, different  
11 types of medical products.

12 MS. FUSCO: Is that all medical  
13 products or devices or which ones?

14 MR. ALLENTUCH: Right. I will  
15 withdraw the question.

16 MS. FUSCO: Yeah.

17 BY MR. ALLENTUCH:

18 Q When you say "the mesh wasn't FDA  
19 approved" -- okay. Let me withdraw the question.

20 When did you learn that the mesh  
21 wasn't FDA approved?

22 A Well, that's a hard question to  
23 answer precisely. But I believe in 2011 I was  
24 becoming more aware.

25 Q Okay.

1           A       Okay. So somewhere in there, but I  
2       can't promise you the day I knew.

3           Q       All right. So if I could summarize  
4       the things you thought Dr. Hines did wrong in  
5       that January 2006 visit, it was that he didn't  
6       tell you the mesh was not FDA approved and he  
7       didn't tell you that the pelvic mesh was a new  
8       treatment for women; is that right? Are those  
9       the two things he did wrong?

10               MS. FUSCO: Objection.

11               You can answer.

12               THE WITNESS: Well, I did answer  
13       those questions.

14       BY MR. ALLENTUCH:

15           Q       Right. But I want to find out if  
16       there's anything -- any other things he did  
17       wrong.

18               Are those the two things he did wrong  
19       in that January 2006 visit?

20               MS. FUSCO: Objection.

21       BY MR. ALLENTUCH:

22           Q       You can go ahead and answer.

23               MS. FUSCO: If you can, yes.

24               THE WITNESS: Well, I felt like, you  
25       know, to add to those that he did not



1 share with me the things that happened to  
2 me. I don't know how much he knew, but he  
3 didn't tell me that my vagina could be  
4 shortened, that it can be hardened, the  
5 mesh could shrink, that I could have some  
6 kind of foreign body reaction to it. I  
7 wish he had told me those things because I  
8 probably certainly would have made a  
9 different choice.

10 He didn't indicate that there was --  
11 I mean, I consider myself having been a  
12 guinea pig now, having had an experiment  
13 done on me. I did not leave the office  
14 having any idea that those things could  
15 happen.

16 BY MR. ALLENTUCH:

17 Q You know, I may not have gotten  
18 exactly what you were saying so I just want to go  
19 over that.

20 He didn't tell you that your vagina  
21 could be shortened, hardened, that you could have  
22 a foreign body reaction. Are those the --

23 A The mesh could --

24 Q -- three things?

25 A -- contract, shrink in your body.

1 Q Contract.

2 A He didn't tell me that the tools that  
3 you use to put mesh in could go through nerves  
4 and create long-lasting pain.

5 Q Okay. All right. So the things  
6 that -- things he did wrong in that January 2006  
7 meeting, was he didn't tell you that your vagina  
8 could be shortened, hardens, you could have a  
9 foreign body reaction, that you could -- the mesh  
10 could contract, that the tools that he would use  
11 in surgery would go through nerves and could  
12 create long-lasting pain, that the mesh was not  
13 FDA approved, and that it was relatively -- that  
14 it was new and a new treatment for women for  
15 pelvic organ prolapse. Are those the things he  
16 did wrong?

17 MS. FUSCO: Objection.

18 You can answer. You can answer if  
19 you can.

20 THE WITNESS: Yes, he didn't tell me  
21 that my bowel could be perforated. I  
22 would say in summary he did not describe  
23 the surgery as a dangerous surgery, but  
24 more portrayed it as a simple outpatient  
25 procedure.

1 BY MR. ALLENTUCH:

2 Q Where did you see Dr. Hines? Do you  
3 remember where his office was?

4 A I think it was on Summer Street, but  
5 he changed offices at one point, so wherever I  
6 saw him the first place I don't think was the  
7 same.

8 I went to Summer Street a few times  
9 and that's the place that I remember.

10 Q Is it your claim that Dr. Hines knew  
11 all of these things you just mentioned, these six  
12 or seven items in January 2006 and intentionally  
13 failed to disclose them to you?

14 MS. FUSCO: Objection. I don't think  
15 there's a claim against Dr. Hines in this  
16 case.

17 BY MR. ALLENTUCH:

18 Q You can go ahead and answer.

19 A You're asking me how I feel, I feel  
20 like he didn't -- that he might have known that  
21 and he should have known that. If he did, he did  
22 not share it with me.

23 Q Do you know --

24 A Sorry. I just have to stand up.

25 Q Sure.

1                   Do you want to -- if you want to take  
2           a break?

3           A        I'm okay. I'm okay. Sometimes  
4           sitting is -- I will be fine in a second.

5           Q        Okay. I mean, let's do a couple more  
6           questions and we'll break for lunch. I want to  
7           try and just finish up this area.

8           A        Yes. Sure. Fine.

9           Q        You studied science in college; is  
10          that right?

11          A        Uh-huh.

12          Q        And you were a microbiologist in  
13          laboratories for many years; is that right?

14          A        Uh-huh.

15          Q        And you -- is it your understanding  
16          that over time science progresses and our  
17          understanding of -- understanding of how the  
18          world works progresses?

19                   MS. FUSCO: Objection.

20                   THE WITNESS: I don't really know how  
21                   the world works.

22           BY MR. ALLENTUCH:

23           Q        Right. Well, that was a broad  
24           question.

25                   But when Sir Isaac Newton, for

1       example, was figuring out, you know, the basic  
2       law of physics, he didn't understand relativity  
3       that Einstein discovered many years later; is  
4       that right?

5                   MS. FUSCO:  Objection.

6                   THE WITNESS:  I don't know that.

7       BY MR. ALLENTUCH:

8           Q       But as a scientist you understand  
9       that as time goes by, our understanding of  
10      microbiology, for example, advances?

11                   MS. FUSCO:  Objection.

12                   THE WITNESS:  I understand that  
13      people's knowledge base increases over  
14      time.

15      BY MR. ALLENTUCH:

16           Q       Right.  At one point we didn't  
17      understand antibiotics, and then Louis Pasteur  
18      invented it, for example; is that right?

19                   MS. FUSCO:  Objection.

20      BY MR. ALLENTUCH:

21           Q       He invented Penicillin.

22                   MS. FUSCO:  Objection.

23                   THE WITNESS:  He discovered it  
24      accidentally.

25

1 BY MR. ALLENTUCH:

2 Q Yeah. Exactly. Right.

3 So are you -- is it -- what I'm  
4 trying to understand, is it possible that  
5 Dr. Hines over time learned, as he did more and  
6 more surgeries, learned more about potential  
7 problems with the Ethicon Prolift --

8 MS. FUSCO: Objection.

9 BY MR. ALLENTUCH:

10 Q -- that he didn't --

11 MR. ALLENTUCH: You got to let me  
12 finish the question.

13 MS. FUSCO: I thought you were. You  
14 paused. I'm sorry. Go ahead.

15 BY MR. ALLENTUCH:

16 Q Okay. Is it possible that Dr. Hines,  
17 as he did more surgeries and more information  
18 became available, learned more about potential  
19 problems with the Ethicon Prolift as time went  
20 forward?

21 MS. FUSCO: Objection.

22 If you know the answer to that  
23 question.

24 THE WITNESS: You're asking a belief,  
25 right?

1 BY MR. ALLENTUCH:

2 Q I'm just asking you if it's possible.

3 MS. FUSCO: Objection.

4 THE WITNESS: I think that's a  
5 subjective question.

6 BY MR. ALLENTUCH:

7 Q Okay. I'm still asking the question.

8 A Okay.

9 MS. FUSCO: Objection.

10 BY MR. ALLENTUCH:

11 Q Can you answer the question?

12 A I can say that when you practice you  
13 get better at things.

14 Q So is it possible he didn't --  
15 Dr. Hines didn't know that -- about these issues  
16 you've raised -- foreign body reactions, mesh  
17 contraction, things like that -- in January 2006  
18 when you met with him?

19 MS. FUSCO: Objection.

20 THE WITNESS: Dr. Hines convinced me  
21 that he knew how to help me and that he  
22 was certain that I would be better off.  
23 So I agreed and I went to Stamford  
24 Hospital and I got mesh put in, on the  
25 belief that my doctor knew everything and

1                   that he would not put a defective product  
2                   in me and harm me.

3           BY MR. ALLENTUCH:

4                   Q       Okay.

5                   A       That's the thing I believe.

6                            Can I add more?

7                   Q       Yeah.   Sure, if you need to finish  
8                   your question.

9                   A       Because it's pertinent to your  
10                  question.

11                           Over time when I went back to  
12                  Dr. Hines with issues that were happening with  
13                  me, he was not sympathetic and he did not --  
14                  until the very last time I saw him, he did not  
15                  think that mesh was my issue.   So if he knew  
16                  more, he didn't ever convey that to me that he  
17                  had learned something.

18                  Q       I guess what I'm trying to  
19                  understand, is there anything that indicated to  
20                  you that he knew that this device would contract  
21                  in you or that your nerves would be perforated or  
22                  that you would have a foreign body reaction or  
23                  any of the things you described when he met with  
24                  you in January 2006?

25                           MS. FUSCO:   Objection.



1                   You can answer if you can.

2                   THE WITNESS: Can you just ask it  
3                   again please?

4                   MR. ALLENTUCH: Sure.

5                   Can you read back the question.

6                   (The Record was read back.)

7                   THE WITNESS: He did not indicate  
8                   that he knew anything about this.

9                   BY MR. ALLENTUCH:

10                  Q       And as you sit here today, have you  
11                  learned anything that tells you that he knew  
12                  those things were -- withdraw the question.

13                  But at some point you came to believe  
14                  that -- is it fair to say that he did know those  
15                  things and should have told you that; is that  
16                  right?

17                  MS. FUSCO: Objection.

18                  MR. ALLENTUCH: Withdrawn.

19                  BY MR. ALLENTUCH:

20                  Q       At some point you concluded that  
21                  Dr. Hines knew in 2006 before the surgery that  
22                  the Prolift could cause vaginal shortening or a  
23                  foreign body reaction or mesh contraction or that  
24                  the tools could perforate your nerves or some of  
25                  the other things you described; is that right?

1 MS. FUSCO: Objection.

2 THE WITNESS: I believe he should  
3 have known.

4 BY MR. ALLENTUCH:

5 Q But at some point did you conclude  
6 that he did know?

7 MS. FUSCO: Objection.

8 THE WITNESS: I guess I'm not  
9 comfortable answering the question.

10 BY MR. ALLENTUCH:

11 Q Do you believe he knew those  
12 things --

13 MS. FUSCO: Objection.

14 BY MR. ALLENTUCH:

15 Q -- in January 2006?

16 MS. FUSCO: Objection.

17 THE WITNESS: I don't think I can  
18 answer the question. I don't know what he  
19 thought. I don't know what he knew. He  
20 inspired confidence in me that he knew  
21 this product well and that he had  
22 expertise in implanting.

23 MR. ALLENTUCH: Okay. Why don't we  
24 take a break for lunch?

25 MS. FUSCO: Okay.

1 (LUNCHTIME RECESS: 12:48 p.m.)

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A F T E R N O O N   S E S S I O N

(Time Noted: 2:05 p.m.)

ROBIN SHERWOOD,

remaining under oath,

resumed and testified as follows:

DIRECT EXAMINATION CONTINUED

BY MR. ALLENTUCH:

Q All set?

A I'm ready, yes.

Q So, Ms. Sherwood, by the time you saw Dr. Hines in January 2006, you had severe pelvic organ prolapse; is that right?

MS. FUSCO: Objection.

If you can answer.

THE WITNESS: That's what it was called, to me.

BY MR. ALLENTUCH:

Q Right. And so at that point, is it fair to say that your uterus was protruding from your vagina by 3 or 4 centimeters; is that right?

A Correct.

Q And you were still having sex with your husband at that point, though?

A Yes. I told you it was messy to just

1 get prepared and push things back in and have  
2 intercourse and take a bath and put the pessary  
3 back in. It was a big production.

4 Q And were you experiencing -- just  
5 before you saw Dr. Hines, end of 2005 when you  
6 were having intercourse with your husband, was it  
7 painful at all at that point?

8 MS. FUSCO: Objection.

9 If you can answer.

10 THE WITNESS: Okay. No, I didn't  
11 have to stop intercourse because of pain.  
12 It was more of a psychology thing for me  
13 and he didn't care. It didn't bother him.  
14 You know, he's very accepting of wherever  
15 I am in life. He wasn't disgusted by me,  
16 but I had issues about, you know, like,  
17 would I get up and walk across the room,  
18 no. I needed a lot more privacy.

19 BY MR. ALLENTUCH:

20 Q And -- well, so on a scale of say 1  
21 to 10, 1 being the least and 10 being the most,  
22 how would you rate your discomfort or pain that  
23 you felt at that point at the end of 2005 when  
24 you were having intercourse with your husband?

25 MS. FUSCO: Objection to form.

1 THE WITNESS: I think you're asking  
2 me if my discomfort was pain?

3 BY MR. ALLENTUCH:

4 Q I want to understand if there was any  
5 pain. Was it a 1 or a zero, or was it more than  
6 that?

7 MS. FUSCO: Objection.

8 THE WITNESS: I would say it was an  
9 irritation of 1.

10 BY MR. ALLENTUCH:

11 Q All right. I understand now.

12 A It was irritating. Sometimes I would  
13 get yeast infections because of the friction and  
14 it wasn't behaving the way it was intended to do.  
15 My vagina was not behaving.

16 Q Right. Okay. Dr. Tool (ph.), who is  
17 Dr. Tool?

18 A She was the internist that did my pro  
19 op (sic). I saw her -- maybe early 2000s at  
20 Dr. Komarynsky's recommendation to talk about the  
21 headaches that I was having, and then she would  
22 just do a physical or I would see her when I get  
23 a cold.

24 Q So she was your internist; is that  
25 right?

1 A Uh-huh.

2 Q Okay.

3 MS. GOODSTEIN: Is that a yes?

4 THE WITNESS: Yes. Oh, yes. You  
5 can't hear my head rattling.

6 BY MR. ALLENTUCH:

7 Q All right. And at approximately the  
8 same time, you were having -- you had issues with  
9 your breast as well; is that right? In early  
10 2006?

11 A Yes. I had a lump that was, you  
12 know, of some concern.

13 Q Did you -- did that require any  
14 treatment?

15 A It was going to be removed in, I  
16 believe, April 2006. And the doctor wanted to  
17 see me one or two days before the surgery and the  
18 lump was gone. So we followed up with an  
19 ultrasound. I didn't have to have surgery and it  
20 didn't come back.

21 Q So you never had a subsequent problem  
22 or treatment for any kind of lumps in your  
23 breast; is that right?

24 A I had a biopsy in the other breast  
25 later that was benign.

1 Q Terrific.

2 A I took care of that.

3 Q Around the same time that you met  
4 with Dr. Hines, did you also start treatment for  
5 narcolepsy?

6 A Before I met Dr. Hines.

7 Q When did you --

8 A Probably two years before I met him.

9 Q Were you always treating with  
10 Fairfield County Allergy for your narcolepsy?

11 A I didn't see them for narcolepsy.

12 Q Okay.

13 A Dr. Tool is at Stamford Hospital.

14 Q All right.

15 A I went to Fairfield County Allergy  
16 for allergies, and then the hives put me into the  
17 rheumatology portion of their practice.

18 Q Okay. So you were treating for --  
19 okay.

20 You were always treating at Stamford  
21 Hospital for narcolepsy?

22 A Yes.

23 Q And was that always the same  
24 physician?

25 A Yes. Sometimes a resident sees me



1 before Dr. Roca, but I always see Dr. Roca in the  
2 end.

3 Q And at about the same time you saw  
4 Dr. Hines, though, was that when you were  
5 diagnosed with connective tissue disease?

6 A No. Long before that.

7 Q Long before that?

8 A Uh-huh.

9 Q And was Fairfield County Allergy the  
10 people you saw for that?

11 A Yes.

12 Q Always?

13 A Always.

14 Q So when did you -- when did you first  
15 start treating with Fairfield County Allergy for  
16 the connective tissue disease?

17 A Approximately four. That's my best  
18 recollection when I had these hives popping up.  
19 But I had them for a year so I don't really --  
20 it's hard to say when the beginning of it was.

21 Q Okay. Other than Dr. Hines, did  
22 you -- withdrawn.

23 Were you -- did you discuss your  
24 issues about prolapse at all with Dr. Tool when  
25 you saw your internist?

1           A       Well, she did the pre-op. I think we  
2       must have talked about it.

3           Q       What do you remember about those  
4       discussions? What did she tell you?

5           A       I don't remember much of a  
6       discussion. Her office was very chaotic. You  
7       know, there were people running in and out of the  
8       rooms, a long wait. You felt like you've been in  
9       a whirling dervish by the time you got out. She  
10      was a nice lady but her practice was chaotic.

11          Q       All right. And at about the same  
12      time again, you had the mesh surgery, you were  
13      also having -- were you having problems with your  
14      shoulder as well?

15          A       Yeah. I injured my shoulder in  
16      October of '05 and it was a torn -- a partial  
17      tear and a bone spur. So I had gone through  
18      physical therapy, and it didn't work so it had to  
19      be fixed.

20          Q       Is that something that continued to  
21      bother you after the beginning of 2006?

22          A       No. I mean, when I got the surgery  
23      when I got it fixed, it was over.

24          Q       And that was also the beginning of  
25      2006?

1           A       Uh-huh.

2           Q       Now, when you were working at  
3       hospitals in your life, you were doing tests that  
4       created medical records, right?

5                   MS. FUSCO:  Objection.

6                   THE WITNESS:  I generated results  
7           that went to, you know, doctors and then  
8           medical records I believe.

9       BY MR. ALLENTUCH:

10          Q       Yes.

11          A       But I didn't -- I didn't have  
12       anything to do with them going in.

13          Q       Into the medical record?

14          A       Yes.  An order was made, a specimen  
15       came, and a result went out.

16          Q       And you understood as part of that,  
17       you could order your records at any time?

18                   MS. FUSCO:  Objection.

19       BY MR. ALLENTUCH:

20          Q       As part of your work at a hospital  
21       you can order your medical records at any time  
22       you wanted?

23                   MS. FUSCO:  Objection.

24                   If you can answer.

25                   THE WITNESS:  I don't think that I

1           ever got any medical records until -- I  
2           mean, when -- I had medical records sent  
3           from doctor to doctor before. I think  
4           doctors were loathed to give you medical  
5           records. So I would not say I understood  
6           that from working in any way.

7           BY MR. ALLENTUCH:

8           Q       So you didn't know you could obtain a  
9           copy of why your medical records is that what  
10          you're telling me?

11          MS. FUSCO: Objection.

12          MR. ALLENTUCH: What's the question?

13          MS. FUSCO: That completely  
14          misrepresents her testimony.

15          MR. ALLENTUCH: That's an objection  
16          to form?

17          MS. FUSCO: Yes. It's an objection.  
18          If you're going to reiterate, just be  
19          truthful. She didn't get it from her  
20          work. That's a different question. So  
21          you're completely misrepresenting her  
22          testimony.

23          MR. ALLENTUCH: I didn't say you  
24          testified.

25          MS. FUSCO: "So you're saying."

1 MR. ALLENTUCH: She can say no. I'm  
2 asking -- whatever.

3 MS. FUSCO: You're supposed to have a  
4 good-faith basis for your question, Simon.  
5 That's my objection.

6 MR. ALLENTUCH: You got to be kidding  
7 me, Jackie. Come on.

8 Why don't you read back the last  
9 question?

10 (The Record was read back.)

11 BY MR. ALLENTUCH:

12 Q You can go ahead and answer.

13 A As Jackie said, work had nothing to  
14 do with it. I mean through life, through moving  
15 from town to town, changing my children's  
16 doctors, I know you can have your records sent.  
17 And at some point you can ask to see your records  
18 if you needed to.

19 Q Okay. And have you ever asked to see  
20 your medical records from any of these providers  
21 that have treated you?

22 A When another doctor asked to see my  
23 records, I had to pick them up because they were  
24 never sent and carry them to him.

25 Q But for your own use have you ever

1       obtained a copy of your medical records?

2               A       Yes. From Stamford Hospital I did  
3       obtain a copy.

4               Q       So was that in connection with this  
5       lawsuit you obtained a copy of your medical  
6       records?

7               A       No. That was in connection with a  
8       doctor trying to take my mesh out and he needed  
9       to know what was in there.

10              Q       Oh, okay. All right.

11                     So you obtained a copy of your  
12       medical records from Stamford Hospital and  
13       brought them to Dr. Raz. Is that what you're  
14       saying?

15              A       Well, Dr. Raz, but I saw other  
16       doctors before Dr. Raz.

17              Q       When did you obtain a copy of your  
18       medical records?

19              A       I don't remember but I started in  
20       earnest looking for a doctor to help me in 2008.

21              Q       What would --

22              A       And I believe I went to a doctor and  
23       he said I'm going to need more than you just  
24       telling me.

25              Q       What were you looking for a doctor to

1 help you with in 2008?

2 A To tell me why this was happening to  
3 me. I mean, what should I do.

4 Q When you say "why this was happening  
5 to me," can you tell me what you mean? Can you  
6 be more specific?

7 A Well, I think so.

8 I didn't get a -- when I went back to  
9 Dr. Hines with complaints, you know, as they were  
10 beginning to happen, I did not get from him an  
11 acknowledgment that my mesh was shrinking or  
12 changing the shape of my body. And he also told  
13 me that it was very unusual and he hadn't heard  
14 of it before.

15 So after he did the revision and took  
16 out the suture, I just didn't have a good  
17 doctor/patient relationship so I thought I need  
18 to find another expert who could explain what's  
19 happening.

20 Q Right. And to deal with -- you  
21 needed to find another doctor to deal with the  
22 fact that the mesh was shrinking?

23 A Yes.

24 Q And help you treat that.

25 Is that -- now, Dr. Hines told you to

1 go see Dr. Bercik; is that right?

2 A Yes.

3 Q Let's go back to the surgery.

4 You had the surgery. Dr. Hines  
5 operated on you in April of 2006; is that right?

6 A Yes.

7 Q And he put an Ethicon Prolift inside  
8 of you; is that right?

9 A That was my understanding.

10 Q Did Dr. Hines talk about other types  
11 other brand names of mesh with you?

12 A No.

13 Q And did you have any -- were you  
14 experiencing any -- withdraw the question.

15 Were you experiencing any major  
16 discomfort in the weeks that followed the  
17 surgery?

18 A I thought it took a little longer  
19 than I was expecting or told to heal. But at  
20 some point, I will approximate it at three or  
21 four months, I thought everything was good. I  
22 was healing. I filled out some questionnaire at  
23 his office and, you know, I had many positive  
24 responses. You know, at that point, I thought  
25 everything was cool.



1           Q     Did you know any women at the  
2     beginning of 2006 who had undergone this type of  
3     surgery?

4           A     No.

5           Q     So is it accurate to say that a month  
6     after surgery, you were feeling pretty good and  
7     having intercourse again with your husband; is  
8     that right?

9           A     Yes.

10          Q     At some point, did you start having  
11     problems after the surgery with the Prolift?

12          A     My first problem that I believe I  
13     talked to him about was I think I had a yeast  
14     infection, which that's not a big deal. Women  
15     get those. But the first real problem I had was  
16     that I was having to go pee all the time. I  
17     could never feel like I didn't have to go to the  
18     bathroom.

19                 So I believe he did a cystoscopy in  
20     his office and told me I was having bladder  
21     spasms and he gave me something to take to lessen  
22     the urge to go. But I couldn't take it because  
23     after it started to take effect, then I had a  
24     very hard time going to the bathroom.

25          Q     Do you remember when this -- can we

1 call it urinary inconsistency; is that right? Is  
2 that what it's called?

3 MS. FUSCO: Objection.

4 BY MR. ALLENTUCH:

5 Q How do you want to -- you tell me how  
6 you want me to describe it. I will use that  
7 term.

8 Pressure?

9 A I felt like -- I went like I think I  
10 have a bladder infection. Not much comes out and  
11 it kind of burns. So I wasn't leaking or  
12 anything like that.

13 Q All right. When -- I see. Okay.

14 And when was that post surgery, when  
15 did that start happening?

16 A In the first year, I feel like -- I  
17 mean, you have to understand that I don't -- I've  
18 had a lot of things and I don't remember.

19 Q I understand. I'm trying to exhaust  
20 your recollection.

21 A I will get close.

22 So I feel like six or seven months  
23 after the surgery when I already thought I'm, you  
24 know, back in the game, that started happening.

25 Q All right. So now we're somewhere in

1 the October, November time frame roughly of 2006.

2 A Uh-huh.

3 Q Did you have any other problems or  
4 symptoms post surgery related to the Prolift  
5 going forward?

6 A Okay. So at about that time, like  
7 towards the end of the year of 2006, I noticed  
8 that, you know, for me, sex was becoming a little  
9 uncomfortable. It felt like, you know, there was  
10 no flexibility. And if it lasted very long, it  
11 was becoming painful. I felt like things were  
12 pulling inside of me.

13 So, you know, I'm pretty sure I went  
14 to the doctor about that. And he did not give me  
15 a solution.

16 Q I'm sorry. He did not what?

17 A He did not give me a solution or an  
18 explanation.

19 Q When you say "no flexibility," what  
20 do you mean?

21 A I felt -- I guess I felt that I had  
22 resistance.

23 Q Okay.

24 A You know, that my tissues were not  
25 moving and accommodating.

1           Q     All right. So do you remember when  
2     you went to Dr. Hines to talk to him about that?

3           A     Again, I'm just going to say  
4     approximately October or November.

5           Q     And what did he tell you in response  
6     to the complaint to the symptoms you were having?

7           A     Nothing specific.

8           Q     Did he recommend any course of  
9     treatment?

10          A     No.

11          Q     Did you -- so let me see if I  
12     understand this. So you complained of painful  
13     sex and he had no recommendations or treatment --

14          A     Well, I said it hurt a little. It  
15     was becoming a little uncomfortable and I was  
16     having a little twinge on the right-hand side and  
17     then it would -- you know, I would think about it  
18     the next day because it still felt a little sore.

19          Q     Did you talk to any of your other  
20     physicians about the pain you were experiencing?

21          A     Dr. Komarynsky.

22          Q     What did you tell Dr. Komarynsky?

23          A     Well, I just told her what was  
24     happening. And she examined me and it seems like  
25     I can feel the arm of the mesh more so on the

1 right side.

2 On one visit, I don't know if it was  
3 directly in line with that one. I saw her a few  
4 times the next year because she was more of an  
5 advocate for me and she had concerns. I believe  
6 she told me to start taking Vagifem, which is a  
7 low dose of estrogen. At some point that was put  
8 in.

9 Q And did -- well, first of all, do you  
10 know whether she talked to Dr. Hines about your  
11 problems? Did she tell you what was going to do  
12 that?

13 MS. FUSCO: Objection to form.

14 BY MR. ALLENTUCH:

15 Q That's two questions. I will ask it  
16 individually.

17 Did Dr. Komarynsky tell you that she  
18 was going to talk to Dr. Hines about the painful  
19 sex you were experiencing?

20 A Not that I recall.

21 Q Do you know whether she did contact  
22 Dr. Hines?

23 A I don't know.

24 Q Did the Vagifem -- I'm not sure I'm  
25 pronouncing that right.

1           A     Attractive name.

2           Q     Right?

3           A     Vagifem.

4           Q     Did that help you?

5           A     A little.

6           Q     Despite the Vagifem, you still had  
7     painful sex with your husband, sex was still  
8     painful with your husband?

9           A     Yes.

10          Q     Did you go back and see Dr. Hines  
11     again?

12          A     I did.

13          Q     Do you remember -- are we in 2007 now  
14     at some point?

15          A     Yes.

16          Q     What did you tell Dr. Hines in this  
17     follow up visit?

18          A     Well, it was a little more  
19     complicated then because in January I started  
20     having bowel problems. Sort of just out of  
21     nowhere. My stomach started hurting and I  
22     started having bloody stools. So I went to my --  
23     my -- found a gastroenterologist and she did a  
24     colonoscopy.

25                     And then I saw Dr. Hines and I told

1 him about it. And at this point, maybe I saw him  
2 a month after that started happening, but in my  
3 mind, I related sometimes these issues happened  
4 during sex, I would have to get up and go to the  
5 bathroom.

6 Q Who was the gastroenterologist you  
7 were treating with?

8 A Dr. Neda Khaghan.

9 Q And that was -- was he part of a  
10 group?

11 A She.

12 Q She. I'm sorry.

13 A Yes. I don't know the name of the  
14 group. It's at the Greenwich -- might be  
15 Greenwich Gastroenterology.

16 Q How do you spell the doctor's last  
17 name?

18 A K-H-A-G-A-N [sic].

19 Q So you had bloody stools and  
20 sometimes --

21 A Crushing pain.

22 Q And had --

23 MR. ALLENTUCH: I'm sorry. Could you  
24 read that back?

25 (The Record was read back.)

1 BY MR. ALLENTUCH:

2 Q Okay. Let's backup here.

3 You had bowel problems with bloody  
4 stool and sometimes you had to go to the bathroom  
5 during sex connected with that, and sometimes you  
6 also had crushing pain. Is that what -- did I  
7 encapsulate what was going on at the beginning of  
8 2007 --

9 A Yes, yes.

10 Q -- with your gastrological problems?

11 A Yes.

12 Q And what did Dr. Khaghan tell you was  
13 the cause of these problems?

14 A At that time she told me I had  
15 colitis and Crohn's disease. But she performed  
16 some -- she sent away some test and it came back  
17 negative. That was her best guess.

18 Q Could you describe the crushing pain  
19 for me. Where was it?

20 A Here.

21 Q In your pelvic region. I'm sorry. I  
22 can't see that.

23 A Yes. All the way through, yes. I  
24 didn't know if it was coming from my pelvic  
25 region or my bowel.



1                   Q       Okay. And on a scale of 1 to 10, how  
2       bad was that pain?

3                   A       I would say it was somewhere like 7  
4       or 8.

5                   Q       How long would it last for?

6                   A       Sometimes half an hour.

7                   Q       Did you ask for any narcotic pain  
8       meds to help treat it?

9                   A       Uh-uh.

10                  Q       That was a no?

11                  A       No.

12                  Q       Okay. Great.

13                         All right. Tell me what steps you  
14       took to try to deal with this pain.

15                  A       I asked both doctors if they felt  
16       they could be interrelated, you know, the mesh,  
17       the surgery I had, and the bowel problems. And  
18       they both assured me that they were not related,  
19       but sometimes the nerves in that area have cross  
20       talk and that, you know, a stimulation could set  
21       off a flare.

22                         I took a drug that didn't do anything  
23       for me called Asacol, I believe.

24                  Q       So did the pain continue?

25                  A       It continued for a while. I did go

1 and see another doctor in New York that was  
2 recommended by a friend who had had an emergency  
3 something, bladder attack or something. I saw a  
4 GI person there for one consult.

5 Q Do you remember what that doctor's  
6 name was?

7 A Daniel Present.

8 Q Could you spell the last name?

9 A It's like a gift, P-R-E-S-E-N-T.

10 Q Oh, okay. And Dr. Present was a  
11 gastroenterologist as well?

12 A Uh-huh.

13 Q What did he tell you?

14 A He said I did not have either Crohn's  
15 or colitis, but I had a localized inflammation or  
16 infection. Changed my medicine and I got better.

17 Q So you basically needed antibiotics  
18 to cure it, was it something like that?

19 A It wasn't an antibiotic that I  
20 understood from him that it had those properties.  
21 It was azulfidine.

22 Q And since then, you never had --  
23 withdrawn.

24 Was that also in 2007 when you saw  
25 Dr. Present?

1           A       Probably late in the year or early in  
2       2008.

3           Q       And after Dr. Present prescribed the  
4       medication you took, you never had any problems  
5       of that type again; is that true?

6           A       No. No. Once it was over it was  
7       over.

8           Q       Okay. Great.

9           A       But it lasted a long time.

10          Q       So let's go back to Dr. Hines. You  
11       were having painful sex. You had this unrelated  
12       problem that was causing you a lot of pain and  
13       you went back to see him during 2007?

14          A       Uh-huh.

15          Q       Right?

16          A       Yes.

17          Q       Did he take any action in 2007 to try  
18       to deal with the painful sex problem?

19          A       No. No, he thought -- he gave me a  
20       name of a gastroenterologist that he liked, but I  
21       didn't follow up with him because I had  
22       already -- identified people to help me.

23          Q       Did Dr. Hines do any surgery on you  
24       in 2007?

25          A       Yes, he did.

1           Q     Okay. Was that to deal with the  
2     painful sex?

3           A     No. It was to deal with some plastic  
4     sutures that had popped through my vaginal  
5     epithelium.

6           Q     So were you having other symptoms  
7     besides painful sex associated with the Prolift  
8     surgery in 2007?

9           A     Well, the sutures that came out, and  
10    Dr. Komarynsky said, I think you need to take  
11    these out. I saw Dr. Hines and he said no. And  
12    then later on when I went back to her she said  
13    they have to come out. And then he agreed to  
14    take them out.

15                   And then I couldn't have sex when  
16    those were out -- I mean, not when they were out,  
17    when they were sticking out of my flesh.

18          Q     So you had no symptoms but  
19    Dr. Komarynsky suggested that these stitches were  
20    a problem during her exam of you; is that right?

21          A     No. I did have symptoms and I was  
22    relating all of them to her, and so she was  
23    inferring that -- not inferring, saying that this  
24    mesh, it's changing in your body. She knew that  
25    I was very sick, you know, with the bowel

1 problems. That wasn't a one-time thing that went  
2 away. It was over several months.

3 Q Okay. So you were seeing Dr. -- let  
4 see if I can get this right.

5 You were seeing Dr. Komarynsky in  
6 2007 and you had additional symptoms related to  
7 the stitches since you also observed them, and  
8 you also told her that the mesh was changing in  
9 your body and that this was a problem?

10 A She told me on exam she could tell  
11 from one time to the next that things were  
12 changing inside. I was going -- pulled -- my  
13 architecture was being pulled more to the right.

14 And I also had -- I'm sure that's in  
15 everybody's records. I had a place in the  
16 anterior section of my vagina that was not smooth  
17 anymore. It had the texture of like a screen  
18 door, even though it was, like, flesh covered.  
19 It was very rough and it didn't seem like -- it  
20 didn't seem like me.

21 Q Is this something else that you found  
22 yourself in 2007 that you were -- that you had  
23 this texture in your vagina?

24 A Yes. It was a place of irritation.  
25 I did a self-check and my husband started saying

1 I don't know what's going on, but it's like  
2 scratchy. And that was sort of before and at the  
3 same time, you know, the plastic sutures just  
4 really popped out there.

5 Q And Dr. Hines removed the sutures in  
6 about August of 2007.

7 A Uh-huh.

8 Q Is that right?

9 A Yes.

10 Q So these -- I want to backup for a  
11 second.

12 What were the -- you mentioned there  
13 were symptoms from the prolene stitches?

14 MS. FUSCO: Objection.

15 THE WITNESS: I don't know exactly  
16 what they're called.

17 BY MR. ALLENTUCH:

18 Q Okay. You mentioned that you had  
19 symptoms from the stitches that Dr. Hines put in.  
20 What were the symptoms?

21 A Well, they were an obstruction. They  
22 were like a big mass of plastic that was very  
23 palpable. I mean, to me it seemed like they were  
24 this big. I don't know how big they were, but  
25 they were not ignorable. So that kind of

1        curtailed, you know, having intercourse.

2                Q        And was that -- was having those  
3        stitches protruding, is that a good way to  
4        describe it "protruding"?

5                A        Uh-huh.

6                Q        Was that painful for you?

7                A        You mean just standing still doing  
8        nothing, no. But if I would do housework or lift  
9        groceries, I had a -- I had a presence, a -- it's  
10       not -- it wasn't pain because I could go ahead  
11       and do everything, but, you know, I was always  
12       noting that I had a pulling or a sensation that  
13       wasn't right in this part of my pelvis, on the  
14       right side (indicating ).

15               Q        Okay. All right. So you went back  
16       to Dr. Hines at Dr. Komarynsky's recommendation  
17       and told him he needed to remove the sutures. Is  
18       that what happened?

19               A        Yeah, because she called him because  
20       he consented. But when I went to him earlier, if  
21       I take them out it might change the rest of the  
22       surgery.

23               Q        Did you discuss treatment options  
24       with him? In other words something other than  
25       just taking them out? And "him" is Dr. Hines.

1           A       I wasn't asking him the questions. I  
2       was asking him what do I do. You know, I was in  
3       the -- pretty like what's happening? Am I going  
4       to die? What's happening to my organs?

5           Q       You were really scared?

6           A       I was really scared. I put my will  
7       in order.

8           Q       And you have to forgive me because  
9       I'm just trying to understand what you're telling  
10      me and I wasn't there.

11                    So Dr. Komarynsky said oh, it's these  
12      stitches, but you were afraid that you were going  
13      to die.

14           A       Well, things kept happening. I mean,  
15      I was having urinary trouble. I was having bowel  
16      trouble. The sutures were -- they had eroded out  
17      into my vaginal vault. And Dr. Hines said if I  
18      take them out, you know, the surgery is going to  
19      change and, you know, things might move. So I  
20      was -- you know, I was having a "holy cow"  
21      moment.

22           Q       I get it.

23                    So he agreed to do the surgery,  
24      right, and he operated on you at Stamford  
25      Hospital in August of 2007?



1           A       Yes. He had me come to Stamford  
2       Hospital, and I was under anesthesia and he took  
3       them out.

4           Q       And did he put in new sutures?

5           A       I don't know.

6           Q       So all you know, he took them out.  
7       You don't know what other things he did while he  
8       was operating; is that right?

9           A       No.

10          Q       No, it's not right; or, no, you don't  
11       know?

12          A       No, I don't know that he did anything  
13       else. It was my understanding that that's what  
14       he was going to do was just take the sutures out.

15          Q       All right. And did you feel any  
16       relief once he took the sutures out?

17          A       No. I was in terrible pain for three  
18       months. You know, his recommendation was to take  
19       Tylenol. A couple of times I called him and said  
20       I can't even stand up. I'm in terrible pain.  
21       And he said there's no reason you should be in  
22       pain. It's probably something else, just take  
23       Tylenol and you're going to be fine.

24          Q       Is that when you -- is that when you  
25       started looking -- trying to find other doctors

1 to help you?

2 A Yes.

3 Q Did you go see Dr. Hines again?

4 A Yes.

5 Q What -- go ahead. I'm sorry. I  
6 didn't mean to cut you off.

7 A No. You ask the next question yes.  
8 I went back to see him.

9 Q Why did you go back to see him?

10 A To talk to him and tell him that I  
11 was pretty sure, not just as the person who  
12 received the mesh, that the mesh was causing me  
13 the problems. And that I needed to do something  
14 about it. And he emphasized that it is  
15 permanent. And I said, well, then I need to -- I  
16 need to see someone else. So he gave me some  
17 names of people to go see. And he said I'm sorry  
18 that you're having problems.

19 Q Did he recommend that you go see  
20 Dr. Bercik in that meeting?

21 A Uh-huh.

22 Q Did he recommend that you go see  
23 Dr. Bercik to remove the mesh?

24 A I don't think that he -- I don't  
25 think -- I don't know I can't answer that

1 question.

2 Q You don't remember him --

3 A I don't remember exactly what he  
4 said.

5 Q All right.

6 A He gave me the names of Dr. Bercik  
7 and another person that I went to see later.

8 Q Because I -- his medical records  
9 reflect that he recommended you see Dr. Bercik  
10 and remove the anterior mesh. Do you remember  
11 him saying that to you or something like that?

12 A I don't recall just what he said.  
13 I -- I will tell you that during that visit I was  
14 in distress. I just needed somewhere to go.

15 Q Do you need a minute? I know this is  
16 very upsetting. I can see you're upset. I  
17 obviously don't mean to upset you. Why don't we  
18 take a second.

19 (Off the record.)

20 MR. ALLENTUCH: I'm sorry. Can you  
21 read back the last question. I remember  
22 what I asked. I'm not sure I got an  
23 answer. So can we just...

24 (The Record was read back.)

25

1 BY MR. ALLENTUCH:

2 Q When you said you needed somewhere to  
3 go, do you mean you just needed someone to treat  
4 the pain you were suffering from?

5 A Yes.

6 Q And did you understand at that point  
7 that you needed to -- withdraw the question.

8 And that was the last time you saw  
9 Dr. Hines; is that right?

10 A Yes.

11 Q That was in December of 2007  
12 approximately?

13 A That sounds right.

14 Q All right. So what did you do to  
15 find someone to help you?

16 A I did call Dr. Bercik. I couldn't  
17 make an appointment with him until I think March,  
18 which was a long way away. He had to be off work  
19 for some -- his own personal surgery or  
20 something. So I made the appointment.

21 And then I asked a friend of mine for  
22 a recommendation of a urologist in New York.  
23 She's a dentist and her husband is a doctor. And  
24 she knew David Staskin, so I called and made an  
25 appointment with him. I didn't know anything

1       about him, just that he was a well-regarded  
2       urologist.

3               Q       Did you consult with Dr. Komarynsky?

4               A       Yes.

5               Q       What -- tell me about your  
6       discussions with Dr. Komarynsky at this time.

7               A       I have to paraphrase, but, you know,  
8       the short answer is that she said I can't -- I  
9       don't know anyone to help you. I don't know  
10      anybody that's had mesh problems like you. But  
11      you got to do it. You have to go find someone.

12              Q       When she said "you've got to do it,"  
13      what did she mean? Did she explain it to you?

14              A       I think taking out was a possibility,  
15      but she didn't promise that. We just discussed  
16      it as, you know, she was my doctor and she said,  
17      you know, I have concerns that this is not going  
18      well for you. You have to find somebody who  
19      knows something about it. And somebody who has  
20      already done this, has already taken it out  
21      successfully.

22              Q       And she told you she had never seen  
23      this type of problem before; is that right?

24              A       At that point.

25              Q       So yes? That was a yes?

1           A       Yes, at that point, she had not seen  
2       this before.

3           Q       So you went and saw Dr. Staskin. Was  
4       that sometime around January 2008?

5           A       Yeah. I saw him twice in quick  
6       succession. He saw me and wanted me to come back  
7       and look inside my bladder.

8           Q       Okay. When you went to see him, were  
9       the symptoms you were suffering from still the  
10      same, painful sex and the other symptoms that you  
11      related to me regarding painful sex?

12          A       Okay. So the sutures came out in  
13      August. No sex yet. Still healing. Still in  
14      terrible pain. That wasn't happening.

15                   In January, my pain disappeared --  
16      well, I would say the volume got turned way down.  
17      Not because of anyone doing anything.

18          Q       Okay. So you -- when we're talking  
19      about pain, we're talking about the pelvic pain  
20      that you had been experiencing; is that right?

21          A       Uh-huh.

22                   MS. GOODSTEIN: That's a yes.

23                   THE WITNESS: Yes. Yes, sorry.

24      BY MR. ALLENTUCH:

25          Q       Sorry. I'm looking down at my notes

1           and I saw you nod. Thank you for catching that.

2                       So when you went to Dr. Staskin,  
3           right, you weren't having sex with your husband  
4           and the pain had gotten better. What were you  
5           telling him was your problem?

6                A       That -- okay. So the pain I had  
7           after the surgery, suddenly got better right  
8           around the time I went to see him. I saw him  
9           once with the pain and by the time I went back,  
10          it was better. But that's a different pain. I  
11          still had tension, pulling, just feeling that,  
12          like, everything was twisting inside of me. I  
13          had a 24-hour awareness that -- I think I knew  
14          just where the mesh was in terms of I can trace  
15          the pain.

16               Q       And it was in the wrong place and  
17          that was causing pain; is that what you felt?

18               A       The arms of the mesh on both sides  
19          had gotten -- I guess they shrunk. They became  
20          hard.

21               Q       And that's what you told Dr. Staskin  
22          when you met with him in January or so of 2008;  
23          is that right?

24               A       Yes.

25               Q       You told him that the mesh shrunk and

1       become hard and felt out of place; is that right?

2               A       Yes.

3               Q       And I take it that's not -- Dr. Hines  
4       had told you what you were -- when you were  
5       considering the surgery, what it would be like  
6       post surgery and it wasn't supposed to be like  
7       that; is that right?

8               A       It was not supposed to be like that.

9               Q       Okay. At this point, again, we're in  
10      January 2008, had you talked to other women who  
11      had had problems with pelvic mesh surgeries?

12              A       I don't think so.

13              Q       All right. Were you doing any  
14      research on the Internet?

15              A       I was looking for doctors that had  
16      experience with, you know, mesh. And, you know,  
17      checking out the doctors that I was given the  
18      names of. I don't think I found anything at that  
19      point about mesh causing problems.

20                      For a very long time I did think that  
21      I was the only person that had a problem.

22              Q       Were you undergoing menopause at this  
23      time as well?

24              A       Well, I'm sure I was because after  
25      the mesh was put in I never had another period.



1       That was a very abrupt ending, so I think I  
2       probably had physical changes going on in my  
3       body.

4               Q       So you never had another period after  
5       April of 2007?

6               A       Right. Uh-huh.

7                       MS. FUSCO: 2006?

8                       MR. ALLENTUCH: 2006. Sorry about  
9       that.

10               Right.

11       BY MR. ALLENTUCH:

12               Q       Let's try that again. So you never  
13       had another period after April 2006; correct?

14               A       Correct.

15                       MR. ALLENTUCH: Thank you, Jackie.

16                       MS. FUSCO: Okay.

17       BY MR. ALLENTUCH:

18               Q       And were you taking any medication to  
19       help you with menopause --

20               A       No.

21               Q       -- during this time period?

22               A       (Witness shakes head.)

23               Q       I saw some references in your medical  
24       records to hormone replacement therapy during the  
25       beginning of 2008. Does that ring any bells?

1           A     Only the Vagifem.

2           Q     Was that a form of -- that is  
3     estrogen?

4           A     Yeah.

5           Q     Did that have to do with mesh  
6     erosion? Is that what you were told?

7           A     I was told it would help keep my  
8     vaginal tissue be estrogenized (sic) and more  
9     pliable.

10          Q     But because of the Prolift, they  
11     weren't pliable, right? Was that your  
12     experience?

13          A     Yes.

14          Q     So what was the -- what -- you saw  
15     Dr. Staskin. You told him about your symptoms.  
16     What did he recommend to you?

17          A     He had another resident look with him  
18     and they discussed in front of me that I might  
19     need to have my -- well, they said, you might  
20     need urethrolysis.

21                 I did not understand what that meant  
22     and I asked, and they said the arms of your mesh  
23     are too tight and they need to be released. But  
24     he did not offer to do surgery. He said I would  
25     like for you to go back to your doctor and tell

1 him, if he broke it, he bought it.

2 Dr. Staskin was leaving the hospital  
3 at that point so he was not looking for new  
4 patients. He gave me the name of someone else to  
5 go to and I did.

6 Q Let me get to that in a second. So  
7 Dr. Staskin was telling you you should have  
8 surgery to sever the arms of the mesh; is that  
9 right?

10 A That's what my take away was.

11 Q Okay. And did he explain to you what  
12 that would do for you?

13 A No.

14 Q So he recommended you see another --  
15 either go back to Dr. Hines or see someone else  
16 he recommended?

17 A Yes.

18 Q Who did he tell you to go see?

19 A Jill Peters-Gee in Hartford.

20 Q Before we get to Dr. Gee, I saw a  
21 reference in your records to a Dr. Porges?

22 A Yes.

23 Q Who is Dr. Porges?

24 A I believe Dr. David Porges was the  
25 head of urogynecology at NYU Hospital. The

1 hospital was down on First Avenue. He was  
2 recommended by Dr. Hines.

3 Q Did you ever go see him?

4 A I did.

5 Q And when was that, do you remember?

6 A Not exactly.

7 Q Was that in -- did you see him in  
8 2008?

9 A Yes, I think so. I don't know if I  
10 saw him before or after Dr. Gee.

11 Q All right. Tell me -- withdrawn.  
12 Were your symptoms changing during  
13 2008 as you were seeing these different  
14 physicians or were they constant or similar?

15 A I don't recall exactly. It didn't go  
16 away. I had resumed having intercourse and it  
17 was painful.

18 Q All right. So you saw Dr. Porges.  
19 You told him about your symptoms; is that right?

20 A Uh-huh.

21 Q And that was also in 2008; correct?

22 A Yes.

23 Q Did you bring him your medical  
24 records?

25 A I don't remember.

1           Q     What about Dr. Staskin? Did you get  
2     your medical records and bring them to him?

3           A     I don't remember. When I left  
4     Dr. Hines' practice he wrote the procedures. I  
5     asked him to write down what had been done so I  
6     could communicate that. And so I don't know the  
7     answer about when the medical records --

8           Q     I'm sorry. Go ahead. I didn't mean  
9     to cut you off.

10          A     I think I took the little sheet of  
11     paper to one or two doctors before I --

12          Q     So when Dr. Staskin, for example, met  
13     with you, he did an exam, he looked at the piece  
14     of paper from Dr. Hines listing the surgeries  
15     that he performed and he listened to your oral  
16     history; is that what he was relying on?

17          A     I don't remember exactly.

18          Q     Okay. All right. Let's go back to  
19     Dr. Porges. What -- tell me about what you --  
20     what Dr. Porges told you.

21          A     I believe he's the first doctor that  
22     I recall saying, I think your mesh needs to come  
23     out. And he said he could do it but it would be  
24     a series of surgeries and they would all be  
25     abdominal.

1 Q Did you tell him you were interested  
2 in doing that? What was your response?

3 A I guess I felt like I needed to get  
4 more information. You know, I asked him some  
5 questions. You know, have you done this before?  
6 Do you still put mesh in people? Exactly what he  
7 said, I didn't, you know -- I don't know.

8 Q Did he tell you whether he had done  
9 it before?

10 A He inferred that he had taken mesh  
11 out.

12 Q He inferred that he had taken mesh  
13 out?

14 A That's what my takeaway was. But his  
15 information was a little vague. And I didn't  
16 really want to have a series of abdominal  
17 surgeries so I thought I should keep moving.

18 Q Okay.

19 MR. ALLENTUCH: Why don't we take a  
20 break for five minutes and we'll continue.

21 MS. FUSCO: It was just a half hour  
22 ago.

23 MS. GOODSTEIN: Two minutes. I need  
24 a little break.

25 MR. ALLENTUCH: It will be two

1                   minutes. I understand you want to finish,  
2                   but just two minutes.

3                   (Off the record.)

4           BY MR. ALLENTUCH:

5                   Q       When you were talking with  
6                   Dr. Staskin and he recommended that you have  
7                   surgery to cut the arms of the mesh, was he  
8                   talking about the Prolift?

9                   A       I assume he was.

10                  Q       Okay. And Dr. --

11                  A       That's the only thing that was  
12                  written on the prescription sheet of paper  
13                  besides the sacrospinous ligament fixation.

14                  Q       I was going to try to pronounce that  
15                  correctly but I failed a number of times. I'm  
16                  glad you took the lead there.

17                  A       I talked over you. I'm sorry.

18                  Q       No. I would have butchered it.

19                           And Dr. Porges, when he was -- he was  
20                  telling you that you should have the mesh  
21                  removed, was he also talking about the Prolift?

22                  A       Yes.

23                  Q       You told me a few moments ago that  
24                  Dr. Staskin recommended that you see Dr. Gee in  
25                  Hartford?

1           A     Yes.

2           Q     Did you do that?

3           A     Yes.

4           Q     And, again, you were complaining --  
5           that was also in the first half of 2008, like  
6           Dr. Porges; is that right?

7           A     Yes. I don't know the exact dates I  
8           think I saw all these people before I saw  
9           Dr. Bercik, or they were sort of clumped up. I  
10          think I paid for Dr. Porges out of my pocket  
11          because I was afraid my insurance company was  
12          going to drop me or something. I was sort of in  
13          a state of like what am I going to do, what am I  
14          going to do. The sky is falling.

15          Q     Your insurance was through your  
16          husband's work; is that right?

17          A     Yes.

18          Q     What does your -- what kind of work  
19          does your husband do?

20          A     He's an economist and a trader and he  
21          was working at a hedge fund at the time.

22          Q     So tell me about your visit with  
23          Dr. Gee. What did you tell her?

24          A     I told her I was having tightness in  
25          my abdomen. I felt like I had bands, you know,



1 radiating from my hips to my uterus. My back  
2 hurt. My leg hurt all the time. And my sitz  
3 bones hurt when I sit for very long.

4 She was very sympathetic. But she  
5 referred me to another doctor.

6 Q What did she -- was she a -- sorry.  
7 Was Dr. Gee a urogynecologist?

8 A Yes.

9 Q But she didn't do mesh excision  
10 surgery.

11 A No.

12 Q Is that what she told you?

13 A Yes.

14 Q And is that why she referred you to  
15 somebody else?

16 A Uh-huh.

17 Q All right. About the same time, were  
18 you seeing Dr. Shea for gallbladder problems?

19 A Uh-huh.

20 MS. GOODSTEIN: You need to say yes.

21 THE WITNESS: Yes. Yes.

22 BY MR. ALLENTUCH:

23 Q You were in a lot of pain -- is this  
24 different than the gastrological problems we were  
25 talking about before, correct?

1           A     It's different.

2           Q     All right. And you were in a lot of  
3 pain; is that right, from the gallbladder?

4           A     Yes. That was kind of an acute  
5 episode.

6           Q     All right. What can you -- were you  
7 on narcotic pain killers because of the pain?

8           A     No.

9           Q     Did you have your gallbladder  
10 removed?

11          A     I did.

12          Q     When was that?

13          A     Well, I know it was in 2008 and I  
14 think it was in March or April.

15          Q     All right. And was Dr. Shea treating  
16 you for this?

17          A     Well, she wanted me to see the  
18 gastroenterologist. I had to have a test at the  
19 hospital called a HIDA scan, and it was sort of  
20 diagnosed and I -- Dr. Khaghan wanted to take my  
21 gallbladder out but I wanted to think on it more  
22 to make sure that that's what I really needed to  
23 do. I didn't want to just -- oh, let's have  
24 another surgery thing.

25          Q     Could you describe the pain for me

1       that you were experiencing as a result of your  
2       gallbladder problems in March or April of 2008?

3           A       Yes. I had like intense pain here in  
4       my shoulder, in my neck. I was vomiting.

5           Q       So was the pain was where your  
6       kidneys are on your right side?

7           A       Just under my ribs.

8           Q       Just under your ribs, okay.

9           A       Yes.

10                  MS. FUSCO: Do you want to describe  
11       it? Is that the front or the --

12                  THE WITNESS: The front.

13       BY MR. ALLENTUCH:

14           Q       I also can't really see either.

15           A       Right upper quadrant just under the  
16       ribs in the front.

17           Q       All right. Thank you.

18                  And on a scale of 1 to 10, what was  
19       that pain like?

20           A       10.

21           Q       10. So what you were doing with your  
22       gallbladder? Were you still trying to deal with  
23       the Prolift mesh problem at the same time?

24           A       Yes. It didn't go away.

25           Q       And you described before how you

1       were -- it was a "holy cow" moment. Is this --  
2       was this gallbladder problem part of that?

3           A       No. That was in the future at the  
4       "holy cow" moment.

5           Q       Oh, that was in the future.

6                    When was the "holy cow" moment then?  
7       Maybe I misunderstood.

8           A       The last time I went to Dr. Hines in  
9       2007.

10          Q       Okay. But we're in March of 2008 now  
11       so I see, this is --

12          A       Yeah.

13          Q       But that feeling had carried over; is  
14       that right, that you were just very upset about  
15       your medical condition and all these problems you  
16       were facing?

17          A       Yes.

18          Q       Okay. I understand.

19                    Did you have the gallbladder surgery?

20          A       I did. I called Dr. Present in New  
21       York and I told him everything. And I said, I'm  
22       probably going to have this taken out. What  
23       should I do? And he gave me the name of a  
24       surgeon there. And had it taken out.

25                    I had another episode like that --

1       they are acute episodes. I think I had a stone  
2       in the duct or something and just vomiting and  
3       intense pain like you're begging someone to cut  
4       you open and take the pain away.

5               Q       All right. And once you had the  
6       surgery, did those problems from your gallbladder  
7       go away?

8               A       For a little while. But six weeks  
9       after the surgery, I had a similar attack that  
10      was quite similar to those. And that turned out  
11      to be -- you know, I had to see a few different  
12      people. I saw Dr. Shea first.

13                    I saw someone Dr. Salke recommended,  
14      and then I went to a doctor at Yale. So it was a  
15      difficult diagnosis, but it's called Sphincter of  
16      Oddi disorder.

17               Q       Was the surgery at Yale for your  
18      gallbladder?

19               A       No. It was at Mount Sinai.

20               Q       I'm sorry. I didn't hear the name of  
21      the disorder. What's it called again?

22               A       Sphincter of Oddi Disorder.

23               Q       Is that something you still suffer  
24      from today?

25               A       Yes.

1 Q Do you still get acute episodes from  
2 time to time?

3 A From time to time. Infrequently.

4 Q When you say "acute," the pain is  
5 like a 10; is that right?

6 A Yes, yes.

7 Q And where is the pain when you have  
8 these episodes? The same place you described  
9 before?

10 A Right -- yes.

11 Q So it turned out your gallbladder was  
12 not the problem but it was this disorder; is that  
13 right?

14 A It was the problem. I had an  
15 obstructing stone I believe, or I had stones or  
16 sand. And the doctors tell me that the reason I  
17 have this is because I have a very tiny common  
18 bile duct. So my body produces little stones,  
19 they can plug it up or I can eat fat, produce too  
20 much bile and it will just stop and close. I'm  
21 careful about what I eat.

22 Q All right. How common were these  
23 episodes in 2008 from this Oddi disorder?

24 A Frequent. They happened every few  
25 days.

1 Q How about in 2009, were they --

2 A Under control.

3 Q Under control?

4 A Uh-huh.

5 Q So they just happened from time to  
6 time in 2009?

7 A Yes. I got a drug to take that will  
8 open the duct back up in 15 or 20 minutes.

9 Q And the doctor who is treating you  
10 for this is at Yale; is that right?

11 A Yes.

12 Q And what's the name of that doctor?

13 A I think his last name is Jamidar.  
14 It's Priya Jamidar or Jamidar Priya. I never  
15 know which direction it goes.

16 Q When did you start seeing  
17 Dr. Jamidar?

18 A Probably by summer of 2008.

19 Q Okay.

20 A I think that Dr. Shea might have made  
21 a call and, you know, helped me verify that he  
22 was the right kind of person.

23 Q Let's go back to the Prolift.

24 You told me you saw Dr. Gee, or  
25 Peters-Gee, and she referred you to other

1 doctors; is that right?

2 A One other doctor.

3 Q Was that Dr. Surrells (ph.)?

4 A Surrells, yes.

5 Q What about Dr. Lasalla?

6 A Who?

7 Q Dr. Lasalla?

8 A I don't know that name.

9 Q Did you go see Dr. Surrells?

10 A I did.

11 Q When did you go see Dr. Surrells?

12 A It's a guess. Maybe in June.

13 Q You saw Dr. Gee in May and then you  
14 went to see Dr. Surrells sometime the next month;  
15 is that approximately right?

16 A Probably.

17 Q What did Dr. Surrells tell you?

18 A He wanted to take out the mesh.

19 Q Is Dr. Surrells affiliated with a  
20 particular practice?

21 A I think so, but I don't know the name  
22 of it. It's right by the hospital in Norwalk.

23 Q All right. So Dr. Surrells wanted to  
24 take out the Prolift, what was your -- is that  
25 right?



1           A       Yes.

2           Q       And what was your response? What did  
3       you tell him?

4           A       I was very cautious at that point. I  
5       asked him a lot of questions and I didn't have  
6       complete confidence in him so I didn't schedule  
7       the surgery. The office called me a couple times  
8       to schedule it. He said he had done training on  
9       cadavers. And I said is that to take them out  
10      and put them in, and I got a lot of different  
11      answers. So I, you know, put the car in gear and  
12      kept moving.

13          Q       Did he tell you why he wanted to take  
14      out the Prolift?

15          A       Not in medical terms, just because it  
16      was getting -- it was shrinking. And causing me  
17      problems.

18                   By this time, I had a complaint that  
19      I felt like my vagina was shortening/

20          Q       I take it when you went to see  
21      Dr. Surrells, you brought the same piece of paper  
22      from Dr. Hines, he did a medical exam and took an  
23      oral history; is that what happened?

24          A       Yes. I think so. I can't recall  
25      exactly what I took. I took myself. I was not

1       having any trouble getting doctors to say that I  
2       had an issue with mesh shrinking inside or  
3       changing my architecture.

4               Q       Right. They all -- everybody you saw  
5       told you the Prolift was a problem.

6               A       Yeah. Nobody told me they wanted --  
7       I didn't get two answers that were the same.

8               Q       And so is it fair to say that by June  
9       of 2008, you had definitively concluded that you  
10      needed to do -- you needed to take the Prolift  
11      out?

12              A       At some point I came to the knowledge  
13      that that's where I needed to go.

14              Q       But that's what all the doctors were  
15      telling you?

16              A       Yes.

17              Q       Did you see a Dr. Siegel during the  
18      May June 2008 time period?

19              A       I don't know. I don't think so. Is  
20      it for the same --

21              Q       So I have some notes here. I will  
22      just tell you what I have.

23              A       Okay.

24              Q       "Evaluation of RUQ pain following  
25      cholecystectomy patient to consider ERCP."

1 Does that refresh your recollection  
2 at all?

3 A Yes. Yes, I recall. Dr. Khaghan  
4 sent me to a group. I didn't see Dr. Siegle. I  
5 saw Seth Cohen in the practice. So ERCP is a  
6 procedure that they use to diagnose Sphincter of  
7 Oddi, but it's kind of risky. It can give you  
8 pancreatitis.

9 So with all of these other things I  
10 had going on, I wasn't really game to just try  
11 something that could make me worse. So again, I  
12 collected his opinion. I thought about it.  
13 Dr. Shea said get another opinion. I don't want  
14 you getting sicker. And then I went to Jamidar.

15 Q And all during this period, middle of  
16 2008, you were having chronic migraines too; is  
17 that right?

18 A Yes.

19 MS. FUSCO: I'm going to object to  
20 the form, though, because that can be a  
21 diagnosis.

22 BY MR. ALLENTUCH:

23 Q Okay. Were you having migraine after  
24 migraine in the summer and fall of 2008?

25 A I'm not going to say yes to that

1       because I was seeing a doctor for migraines. And  
2       I think that I was having some luck with the  
3       control of those.

4               Q       Okay. So Dr. -- I have Dr. Grosberg  
5       wrote in his notes that, in September of 2008,  
6       that "there's a longstanding episodic migraines  
7       which have evolved into a pattern of chronic  
8       migraine with medication overuse."

9               Does that ring any bells as to --  
10       does that refresh your recollection as to what  
11       was going on in the summer or fall of 2008 with  
12       your migraines?

13              A       Yes. I think that he told me I was  
14       getting rebound headaches from using the rescue  
15       drug and then Naprosyn or Advil continuously.

16              Q       How were the migraines affecting your  
17       life? I know you had a lot of other medical  
18       problems going on, but...

19              A       Well, they weren't adding any joy to  
20       my life. They were there, but I actually had  
21       confidence in Dr. Grosberg, and he explained  
22       everything carefully and he assured me that they  
23       had many things and we would find something. I  
24       was not dwelling on migraines because I had found  
25       this doctor who I was pretty sure had -- you

1 know, had it under control.

2 Q What I'm trying to understand, you've  
3 told me about your Oddi syndrome, the gallbladder  
4 problems, your problems with the Prolift and the  
5 repeat migraines, how were those things, you  
6 know -- all four of those things and the other  
7 problems you were having -- affecting your  
8 ability to enjoy life during 2008?

9 MS. FUSCO: Objection to form.

10 Go ahead.

11 THE WITNESS: I don't think I was  
12 enjoying life very much.

13 BY MR. ALLENTUCH:

14 Q All right.

15 A I was committed to getting better.

16 Q And was it the -- was the key  
17 impediment to you enjoying life the fact that you  
18 had so many different problems coming from  
19 different parts of your body in 2008?

20 A I think that's accurate.

21 Q Yeah. All right. We talked before a  
22 little about Crohn's disease.

23 A Uh-huh.

24 Q There are subsequent references in  
25 your medical records to Crohn's disease. I'm not

1 clear, do you suffer from Crohn's disease or did  
2 you have Crohn's disease?

3 A No. No. From my understanding, if  
4 you have Crohn's disease there's a genetic test  
5 that would be positive.

6 I did ask the person in the practice  
7 I see now, Jennifer Barrow, if she could amend  
8 the diagnosis because I haven't had a problem and  
9 I've had colonoscopies that showed no problems  
10 except scarring. So I don't think you would find  
11 that now.

12 Q Okay. So going back to the Prolift,  
13 you told me that you saw \*Dr. sural, decided not  
14 to treat with him. What was the next step that  
15 you took in dealing with the problems you had  
16 with the Prolift?

17 A I saw Dr. Bercik somewhere in there.  
18 I liked him a lot and he's very sympathetic. He  
19 didn't have a definitive -- you know, he had a --  
20 sort of an answer to a sort of start something,  
21 maybe release the mesh, maybe take part of it  
22 out. But I didn't feel like he had done that  
23 very often. And he was very forthright.

24 Q Are you saying that Dr. Bercik  
25 recommended a process whereby he would first cut

1       the arms of the Prolift, and if that didn't  
2       provide relieve he would then move onto a second  
3       surgery, which was a total excision of the  
4       Prolift?

5               A       I don't think I discussed it in that  
6       much detail. He said the right side of my inner  
7       pelvis was very tight and that I needed to have  
8       that released or let go.

9               Q       Okay. And I have -- according to my  
10      notes, you met with Dr. Bercik on March 25th,  
11      2008. Does that sound about right?

12              A       It sounds right.

13              Q       All right. So you've now seen  
14      Dr. Gee and Dr. Bercik and Dr. starves and  
15      Dr. Porges. What did you do next to deal with  
16      your problems with the Prolift?

17              A       I think I stopped looking for a  
18      while. I started looking for answers online. I  
19      tried to educate myself more. I read blogs from  
20      women -- I found that there were other people  
21      with issues.

22              Q       So is that what you did during -- was  
23      that all taking place during 2009?

24              A       I don't know when I started that. I  
25      did just -- I do recall just feeling like I --

1       you know, this is -- I'm not going to do  
2       something else that could be harmful. And I  
3       think I just lived with it for a while.

4               Q       All right.

5               A       I don't really know. I can't  
6       remember whenever I, you know, picked up again  
7       and said, I've got to do something. I had my --  
8       this issue was in order. My headaches were  
9       better. My gallbladder was gone. And I do  
10      remember thinking, this is just the way it's  
11      going to have to be.

12              Q       Well, what -- you know, starting at  
13      the end of 2008 and into 2009, what kind of  
14      symptoms were you suffering from at that point  
15      from the Prolift?

16              A       I had tightness in my pelvis. My  
17      vagina was definitely shortened -- I had pain in  
18      my sitz bones in my groin, down my right leg.  
19      Activities, you know, would make it worse.

20              Q       What kind of --

21              A       Sort of the same symptoms I've  
22      already described to you. None of them went  
23      away.

24              Q       And the reason I ask is not to ask  
25      you the same question. I'm trying to find out



1       whether your condition did change.

2               A       It didn't. But my state of mind  
3       changed.

4               Q       And these symptoms you just  
5       described, did they -- did you have any other  
6       symptoms as a result of the Prolift other than  
7       the ones you just described?

8                       I could repeat them to you if you  
9       would like.

10              A       No, I know them.

11                     I probably, during that time,  
12       developed a spot on the right side of the  
13       introitus of my vagina that was -- you know, it  
14       was textured like the top where it felt like  
15       there was screen door wire in it. It was  
16       sensitive. It was painful. I had yeast  
17       infections. I had a lot of urinary tract  
18       infections.

19              Q       All right. So other than the  
20       symptoms you just described, the yeast  
21       infections, the spot on your side of your vagina  
22       and top that was textured and painful, the  
23       tightness, the shortened vagina, the bone pain,  
24       the pain in your groin, the pain down your right  
25       leg and the activities making it worse, were

1       there any other symptoms that you were  
2       experiencing because of the profit in 2008?

3               A       I think I covered them.

4               Q       I'm sorry. And that would be true in  
5       2009 as well?

6               A       Yes.

7               Q       And what about 2010 you would have  
8       the same symptoms in 2010?

9               A       Yeah. I -- I would say that the  
10       tightening essentially in my right side had  
11       gotten tighter. I felt like it was pulling. My  
12       hip hurt a lot. I don't think I mentioned that  
13       my hip hurt at the beginning after the surgery  
14       and pretty much since then. They're sort of all  
15       interconnected to me, but sometimes my hip does  
16       get flared out and, you know, causes problems.

17              Q       All right. I just want to go back to  
18       the April 2006 surgery for a moment with  
19       Dr. Hines.

20              A       Okay.

21                      Can I just stand up? Go ahead. I  
22       just need to stand up for a second.

23              Q       Sure. Sure.

24                      Tell me, did you go to the hospital  
25       that morning when you had the surgery? Was it in

1 the morning?

2 A Yes, I had to withhold foods, and my  
3 husband took me to Stamford Hospital the morning  
4 of the surgery.

5 Q And you worked at hospitals, right?  
6 There was no -- you didn't see a store at  
7 hospital the selling medical devices like the  
8 Prolift; is that correct?

9 A No.

10 Q Right. It's a prescription device;  
11 is that right?

12 A Right. I don't think they would have  
13 given it to me, yeah.

14 Q Without a prescription?

15 A Right.

16 Q Right.

17 And what was Stamford Hospital's role  
18 in selling the device to you. Can you explain  
19 that to me?

20 A Well. I don't think that --

21 Q Actually let me give you a qualifier.  
22 Separate and apart from Dr. Hines, I'm trying to  
23 understand -- you've talked about him. I'm  
24 trying to understand what the hospital's role,  
25 just the hospital.

1           A       I believe that Stamford Hospital  
2           sanctioned and supplied the sale of the Prolift  
3           for the doctor to implant. And I feel like the  
4           product, or know that the product, is defective.

5           Q       So would you agree that Stamford  
6           Hospital ordered the Prolift from Ethicon? Or  
7           purchased -- let me withdraw that.

8                    Would you agree that Stamford  
9           Hospital purchase the product from Ethicon?

10          A       Somehow it got there. Either they  
11          pushed it or Ethicon gave it to them. I don't  
12          know how they got it.

13          Q       And other than purchasing it from or  
14          obtaining it from Ethicon, what else did Stamford  
15          Hospital do in connection with your -- supplying  
16          the Prolift to you?

17          A       Well, I think they supplied an OR.

18          Q       Right.

19          A       And a staff --

20          Q       Okay.

21          A       -- to help Dr. Hines perform the  
22          surgery.

23          Q       Okay.

24          A       And they took care of me, sort of  
25          post-op.

1           Q       Okay. So other than obtaining the  
2       Prolift for the surgery, and supplying a staff  
3       and an operating room and then taking care of you  
4       post-operatively, was there anything else that  
5       Stamford did that was part of its role in selling  
6       you the Prolift?

7                   MS. FUSCO: Objection to form.

8                   THE WITNESS: I think I want you to  
9       rephrase that or something.

10       BY MR. ALLENTUCH:

11           Q       Okay. All right. So -- look. I  
12       will put it as clear as I can. Your complaint  
13       alleges that Stamford Hospital sold you the  
14       Prolift, and I'm trying to understand, since you  
15       were there, what Stamford Hospital did to sell  
16       you the Prolift.

17                   You've already told me some things.  
18       I'm trying to find out is there anything else?

19           A       I think they supplied it. I think  
20       that my insurance paid for it. I paid my  
21       premiums. I assume that Stamford Hospital -- I  
22       can't assume anything, can I? I don't want to  
23       assume anything.

24           Q       Okay. Other than supplying the  
25       Prolift for the surgery and billing your

1 insurance, do you know if Stamford Hospital did  
2 anything else as part -- in connection with its  
3 sale of the Prolift to you?

4 A Well, I feel like there was a point  
5 in time where Stamford Hospital might have known  
6 that the product was not good for me to have and  
7 they didn't notify me.

8 Q Was there someone in particular at  
9 the hospital? I mean -- withdrawn.

10 You worked at hospitals, right?

11 A I worked in a laboratory, which is in  
12 a hospital. It's sort of in a -- I don't want  
13 you to get the wrong idea. You can't go into a  
14 laboratory -- laboratory people don't often go  
15 out.

16 Q When you worked at various hospitals,  
17 there were nurses and administrators and people  
18 holding all different types of positions; is that  
19 right?

20 A Yes.

21 Q What I'm trying to understand is who  
22 at Stamford Hospital failed you in your  
23 understanding?

24 A I don't know if there is a physician  
25 review board to look at if patients have problems

1       when certain surgeons do certain procedures. I  
2       don't know if there's a quality control  
3       department. But the way other organizations work  
4       in customer service, you know, I think there must  
5       be an equivalent to those.

6               Q       Do you know whether there were other  
7       Prolift surgeries before April 2006 where there  
8       were substantial complications such that the  
9       hospital should have known to warn you?

10               MS. FUSCO: Objection to form. Are  
11       you talking about just surgeries before  
12       2006 or surgeries and the complications  
13       that occurred before 2006?

14               MR. ALLENTUCH: Do you want to read  
15       back the question?

16               MS. FUSCO: I know what the question  
17       is. I want to know what your intent is.

18               MR. ALLENTUCH: Surgeries and  
19       complications. I think I said surgeries  
20       and complications.

21               MS. FUSCO: That's why it's a  
22       compound question, so I'm unclear. You  
23       wanted them both before.

24               MR. ALLENTUCH: All right. Why don't  
25       I rephrase the questions.

1 MS. FUSCO: Yes.

2 BY MR. ALLENTUCH:

3 Q Do you know whether, before your  
4 surgery, there were Prolift surgeries at Stamford  
5 Hospital with serious complications?

6 A I do not know.

7 Q All right.

8 MR. ALLENTUCH: We're going to take  
9 one minute.

10 (Off the record.)

11 BY MR. ALLENTUCH:

12 Q All right. I just want to be -- I  
13 want to see if I understand this.

14 The things the hospital did wrong  
15 were sold you the -- sorry, obtained the product,  
16 it billed your insurance, and if there was some  
17 kind of physician review board or quality control  
18 department that knew about problems with the  
19 Prolift, you should have been told that before  
20 the surgery?

21 A Or after.

22 Q Or after?

23 MS. FUSCO: Objection to form.

24 BY MR. ALLENTUCH:

25 Q Are those the things that the



1 hospital did wrong in this case?

2 MS. FUSCO: Objection to form.

3 BY MR. ALLENTUCH:

4 Q You can go ahead and answer.

5 MS. FUSCO: If you can answer.

6 THE WITNESS: Yeah. I think those  
7 things could have been done differently.  
8 I think they were wrong.

9 BY MR. ALLENTUCH:

10 Q Was there anything that I missed?  
11 Was there any other things the hospital did wrong  
12 in connection with your -- with this case?

13 A Well, I didn't have a very pleasant  
14 stay in the hospital. He did not give me pain  
15 medication on a routine schedule. I had to beg  
16 for it. I had to beg the doctor for it. I  
17 wasn't supposed to be in the hospital.

18 I don't know that I could say that's  
19 anyone's problem or fault, but I was much more  
20 impacted than I was told I would be. And I never  
21 got a reason for it from the doctor. Why did I  
22 wind up in the hospital? Why was I sick? Why  
23 was I on antibiotics?

24 Q Was your stay after the surgery  
25 longer than you expected?

1           A       Yes.

2           Q       Were there complications from the  
3 surgery? Is that why you ended up staying longer  
4 at the hospital?

5           A       There were, but I wasn't told about  
6 them.

7           Q       What were the complications from the  
8 surgery?

9           A       Dr. Hines told my husband that I had  
10 really thin tissues and that my tissues weren't  
11 as operable as he thought, which was -- my  
12 husband is not very -- you know, he said I didn't  
13 really understand, but, you know -- I didn't know  
14 at that point that I didn't have the exact  
15 procedure that he had outlined for me. So I  
16 guess I felt like I was an uninformed patient.

17                   I didn't have -- I didn't have  
18 information and I didn't have choices.

19           MR. ALLENTUCH: Could you read back  
20 the last answer?

21                   (The Record was read back.)

22       BY MR. ALLENTUCH:

23           Q       Okay. You said you didn't have the  
24 exact procedure that you thought. What did you  
25 mean?

1           A       When I was -- Dr. Hines talking about  
2       what I needed to have done, he described that I  
3       had a condition that I needed a total Prolift.  
4       He said I had prolapse of my uterus, prolapse of  
5       my bladder and prolapse of my rectum, and he  
6       would put the entire Prolift in. And it would  
7       also -- I had a little complaint.

8                   I mean, he sort of questioned me  
9       about it, that I had some -- you know, if I was  
10      jumping rope I might have a little urine leakage  
11      and that the procedure he was going to do would  
12      fix all of my problems.

13                  So in the end, you know, it was -- I  
14      don't know when I figured it out, but he put in  
15      an anterior Prolift. And he also -- well, he  
16      never told me that I had another type of mesh in  
17      me but I did. And he never told me that he  
18      perforated my bowel.

19                  Now, I'm saying if I knew I had a  
20      bowel perforation, I might have asked for an  
21      infectious disease person to oversee my  
22      treatment.

23           Q       It is my understanding, based on the  
24      current complaint that the AMS Monarc Sling is  
25      not part of this case; is that accurate?

1 A Yes.

2 Q Did you settle your case with AMS?

3 A Yes.

4 Q What was the amount of the  
5 settlement?

6 MS. FUSCO: Objection.

7 Attorney/client privilege. Do not answer  
8 that question.

9 INST

10 BY MR. ALLENTUCH:

11 Q Were you paid the settlement amount  
12 by AMS?

13 MS. FUSCO: Objection. Same  
14 objection. Attorney/client privilege.  
15 You're not to answer that question.

16 INST

17 BY MR. ALLENTUCH:

18 Q Did you provide AMS a release as a  
19 result of the settlement in this case?

20 MS. FUSCO: That's okay.

21 THE WITNESS: I did.

22 BY MR. ALLENTUCH:

23 Q If Dr. Hines had privileges at  
24 Westchester Hospital instead of Stamford  
25 Hospital, would you have gone there for the

1 Prolift surgery?

2 MS. FUSCO: Objection to form.

3 BY MR. ALLENTUCH:

4 Q You can go ahead and answer.

5 A I went where Dr. Komarynsky suggested  
6 I go. I guess if she told me to go to  
7 Westchester Hospital or Norwalk Hospital, I would  
8 have followed her advice. She had done a good  
9 job taking care of me.

10 Q What I'm trying to understand, were  
11 you -- you were treating with Dr. Hines, right?  
12 He was your doctor?

13 A Yes.

14 Q And so -- and he was the one doing  
15 the surgery; is that right?

16 A Yeah. I went to him specifically for  
17 a surgical solution for my problem.

18 Q What I'm trying to understand is  
19 he -- for example, Dr. Hines also had privileges  
20 at one point at Westchester Hospital. Had he  
21 elected to do the surgery there, would that have  
22 been all right with you?

23 MS. FUSCO: Objection.

24 If you can answer.

25 THE WITNESS: I can't see any reason

1                   that I wouldn't go there.

2           BY MR. ALLENTUCH:

3                   Q       All right. So at some point you went  
4           to UCLA Medical Center; is that right?

5                   A       I did.

6                   Q       Was that in 2010?

7                   A       Yes.

8                   Q       Why did you go to UCLA Medical  
9           Center?

10                  A       I spent some time reading blogs and  
11           accounts from women who had had similar issues.  
12           And it seemed like there was a theme of who was  
13           able to help people and to take out the mesh.  
14           There was a consensus. And people -- women in  
15           these blogs highly recommended him.

16                  Q       When you say "highly recommended,"  
17           was that Dr. Raz they highly recommend?

18                  A       Uh-huh. There were about three  
19           doctors that the names kept coming up as "I trust  
20           this person with my life."

21                  Q       So other than Dr. Raz, who were the  
22           other two?

23                  A       Philippe Zimmern and another doctor  
24           named Veronikis.

25                  Q       Was your treatment by Dr. Raz covered

1 by insurance?

2 A Yes.

3 MR. ALLENTUCH: Actually, let me just  
4 take a minute. The one of the things I'm  
5 missing from the discovery is the medical  
6 specialists. There's a bunch of things  
7 that need to be provided that haven't been  
8 provided.

9 MS. FUSCO: Bills? I'm not sure.

10 MR. ALLENTUCH: There's a bunch of  
11 things to be provided, and maybe you can  
12 go ahead and do that so that -- actually  
13 you're going to oppose continuing the  
14 deposition?

15 MS. FUSCO: If there's stuff we have,  
16 we usually pass it on right away. I'm not  
17 sure what specifically you're talking  
18 about.

19 MR. ALLENTUCH: If you look at your  
20 interrogatory responses.

21 MS. FUSCO: That, I understand. What  
22 specifically are you talking about? Are  
23 you talking about one or all of them in  
24 general?

25 MR. ALLENTUCH: Well, I mean, you

1 know, it -- there's a bunch of them that  
2 says "to be provided," but they've never  
3 been -- here. I found it here.

4 THE REPORTER: We're on the record,  
5 right?

6 MR. ALLENTUCH: No. We can go off  
7 the record.

8 (Off the record.)

9 BY MR. ALLENTUCH:

10 Q So when did you first meet with  
11 Dr. Raz?

12 A I believe it was November of 2010.

13 Q And I know we've discussed the  
14 symptoms before, the symptoms you were having,  
15 they were still the same when you went to see  
16 Dr. Raz in November of 2010; is that right?

17 A Yes. But I didn't tell him my  
18 symptoms this time was different. I had decided  
19 I wasn't going to tell people what was wrong with  
20 me. I was going to see what kind of answer they  
21 gave me and what they told me.

22 Q Did you bring any medical records  
23 with you to see Dr. Raz? I think you told me you  
24 brought some.

25 A I think by that time I did bring some



1           because his office was very thorough.

2           Q       What medical records did you bring  
3           with you?

4           A       I believe at this time I had asked  
5           for the surgical records from the medical records  
6           office from Stamford Hospital and that's it. I  
7           might have gotten Dr. Hines' notes, but I don't  
8           think I had done that by that time. I think I  
9           asked for them and they never sent them. All  
10          they wanted were the operative reports, and I  
11          think I took those.

12          Q       All right. And so you told Dr. Raz  
13          you didn't want to give him a description of the  
14          problems you were suffering from; is that right?

15          A       Yes.

16          Q       So did the appointment primarily  
17          consist of him examining you? Is that what  
18          happened? Tell me what happened.

19          A       Yes. He came in the room and he and  
20          his resident -- or I don't know if she was a  
21          resident -- Lisa Rogo Gupta I believe is her  
22          name.

23                   He knew I was there for mesh and he  
24          said this is what I see is wrong. Your vagina is  
25          too short. It's rigid. The arms of your mesh

1       have shrunk. I can feel the mesh in the top of  
2       your vagina and on the side.

3                   He asked me if I could have  
4       intercourse and I said, yeah, modified  
5       intercourse, which is not face-to-face anymore at  
6       this point. And he just seemed to me exactly --  
7       he seemed to have my answers.

8           Q       All right. You said you couldn't  
9       have face-to-face intercourse. What did you  
10      mean?

11          A       By this time I had to just have rear  
12      entry so there wasn't full penetration.

13          Q       Was that still enjoyable for you?

14          A       Hell no.

15                   Sorry.

16          Q       It took me a moment to be able to  
17      come up with the right question there because,  
18      like you, I don't entirely want to ask you about  
19      your sex life.

20          A       Yes.

21          Q       So it was uncomfortable?

22          A       Yes. Painful.

23          Q       Painful?

24          A       Yes.

25          Q       Did he recommend a course of

1 treatment for you?

2 A He recommended that I come back as  
3 quickly as possible to have a couple of  
4 diagnostic tests to see if they could visualize  
5 the mesh with translabial ultrasound and do some  
6 Euro dynamic test.

7 So I did go back in December. I  
8 mean, at that point I knew I was home. I knew I  
9 was going to do this. I scheduled the surgery,  
10 and I got back there in December for the  
11 diagnostic tests.

12 Q All right. So in November -- just so  
13 I understand this, November 2010 you met with  
14 him, he diagnosed your problems, recommended some  
15 tests and you scheduled the surgery; is that  
16 right?

17 A Yeah. He gave me great confidence.

18 Q And the surgery we're talking about  
19 is the complete removal of the Prolift, the  
20 Ethicon Prolift; is that right?

21 A Yes.

22 Q Around the same time there's a bunch  
23 of references to hip pain. Is that something  
24 that was also related to the problems you were  
25 having with the Prolift?

1           A       Yes.

2           Q       How was that related?

3           A       I had amorphous answers about that.

4       One doctor that I saw -- I mean, I did finally  
5       see I think one doctor specifically about the hip  
6       pain, and I mentioned the mesh and what it had  
7       done. And he said -- I mean, he did an MRI. He  
8       saw that there was damage in my hip, and he said  
9       the sacrospinous ligament fixation could have  
10      been pulling or the mesh, contracting, could have  
11      been pulling me, the scaffolding or my  
12      architecture just enough that, you know, my  
13      labrum was being rubbed the wrong way.

14          Q       Was that Dr. Moley who you were  
15      treating with for your hip?

16          A       Uh-huh. M-O-L-E-Y.

17                   MS. GOODSTEIN: Was that a yes?

18      BY MR. ALLENTUCH:

19          Q       Yes. I'm sorry. Was that a yes?

20          A       Yes. He gave me anti-inflammatories.  
21      He said, keep moving. Stay active as much as you  
22      can. I did have to take one steroid shot because  
23      it got very bad at one point.

24                   But I'm not sure that there's a  
25      connection on paper. I don't know if there is.

1       My hip hurt like crazy after the surgery after  
2       the implant.

3               Q       And that continued from --

4               A       Until today.

5               Q       -- April 2006 until today?

6               A       Uh-huh.

7               Q       Did you have hip problems before the  
8       Prolift surgery?

9               A       No.

10              Q       And was it fair to say that wasn't  
11       supposed to happen as a result of the Prolift  
12       surgery, correct?

13              A       No.

14              Q       All right. So you -- other than  
15       removing the mesh, was Dr. Raz doing --  
16       withdrawn.

17                     What was Dr. Raz going to replace --  
18       put in place of the mesh to deal with your  
19       problems with your cervix falling through your  
20       vagina?

21              A       My understanding was that he would  
22       try to find the origin of why it was prolapsing.  
23       And to correct the native tissues with sutures.

24              Q       All right. So you had the testing  
25       you described that was done in December of 2010;

1 is that right?

2 A I think so.

3 Q And there's a pre-op eval done at the  
4 same time?

5 A No. The pre-op was done back here in  
6 Connecticut with Dr. Shea.

7 Q Okay.

8 A I don't think they let you do a  
9 pre-op with the same practice that's doing the  
10 surgery.

11 Q One thing we didn't cover and I will  
12 ask you about it now.

13 Were you at any point suffering from  
14 urinary incontinence?

15 A Not at that point.

16 Q Okay. All right. And in  
17 February 2011, the Prolift was removed from your  
18 body; is that right?

19 A Yes.

20 Q When did you decide to file a lawsuit  
21 against Stamford Hospital?

22 A About a year ago. I don't know if it  
23 was exactly a year but pretty recently in the  
24 scheme of things.

25 Q Just to help you out, I think this

1 case was filed in 2014.

2 A Okay.

3 Q So it's been pending for -- since  
4 that time.

5 A Okay.

6 Q What led to your decision to sue  
7 Stamford Hospital?

8 A A lawyer friend that I have asked  
9 me -- I mean, he knew about my issues somewhat  
10 and he asked me if I might be a witness to  
11 another trial here.

12 Q Who -- who -- I'm sorry. Go ahead.

13 A So I agreed. I said -- I mean, it  
14 was the same doctor. So I agreed. And I came to  
15 be interviewed here and it evolved into talking  
16 about my own issues.

17 Q Who was the lawyer friend?

18 A Doug Wells.

19 Q Doug Wells?

20 And did Mr. Wells refer you to  
21 Ms. Fusco's firm?

22 A Yes.

23 Q Did Mr. Wells tell you you had a  
24 claim against the hospital?

25 MS. FUSCO: I want to just caution if

1           he's a friend or is he acting as an  
2           attorney. So if there's attorney/client  
3           privilege for Attorney Wells, I want you  
4           to be cautioned.

5           THE WITNESS: Oh, okay.

6           MS. FUSCO: Were you talking to him  
7           as a friend or a lawyer?

8           THE WITNESS: At that time, I had  
9           hired him as a lawyer so I guess I need to  
10          be cautious about that.

11         BY MR. ALLENTUCH:

12           Q       Did you sign a retainer agreement  
13           with Mr. Wells?

14           A       Yes.

15           Q       I'm going to put a series of  
16           questions on the record and I will tell you  
17           because of the defense -- the position you've  
18           taken in this case, you've put Supreme Court  
19           decision of Met-Life and so I'm actually entitled  
20           to ask.

21           MS. FUSCO: Wait, wait.

22           MR. ALLENTUCH: I'm entitled to ask  
23           these questions and get this information.

24           MS. FUSCO: About her attorney/client  
25           privilege with Attorney Wells?



1 MR. ALLENTUCH: Yes.

2 MS. FUSCO: I can't allow her to  
3 answer that.

4 MR. ALLENTUCH: You can direct her.  
5 I mentioned the case. You can go read it.

6 MS. FUSCO: Well, I think that's --  
7 Attorney Wells isn't here to defend that  
8 relationship, so I don't know --

9 MR. ALLENTUCH: The privilege belongs  
10 to her --

11 MS. FUSCO: -- if she can answer it.

12 MR. ALLENTUCH: -- so she can assert  
13 it.

14 MS. FUSCO: I'm going to instruct her  
15 if there's something that's  
16 attorney/client privilege between her and  
17 Attorney Wells, for the time being I'm  
18 going to instruct her not to answer  
19 because I don't have that authority --

20 MR. ALLENTUCH: I understand.

21 MS. FUSCO: -- or authority to  
22 counsel her on whether or not she wants to  
23 waive that privilege.

24 INST

25 MR. ALLENTUCH: Do you need to take a

1 minute?

2 MS. FUSCO: No.

3 MR. ALLENTUCH: I'm just going to --

4 MS. FUSCO: Can you first explain how  
5 is her conversation with Attorney Wells at  
6 issue such that you think the privilege is  
7 waived.

8 MR. ALLENTUCH: So you -- understand  
9 the -- I can do it on the record.

10 MS. FUSCO: We can do it on the  
11 record.

12 MS. GOODSTEIN: Do you want to do  
13 this in front of witness?

14 MS. FUSCO: I'm not sure what you're  
15 getting at here.

16 MR. ALLENTUCH: That's fine.

17 You should go and take a look at a  
18 case called Metropolitan Life versus Aetna  
19 Casualty where a party puts the privilege  
20 at issue in a case. The defense is  
21 entitled to inquire about attorney  
22 compliant communications.

23 MS. FUSCO: I understand that. But  
24 my question is how do you think it's  
25 applicable to this case.

1 MR. ALLENTUCH: Sure.

2 You've taken the position that the  
3 statute of limitations doesn't start to  
4 run until an attorney tells Ms. Sherwood  
5 that she has a claim. If that's not your  
6 position --

7 MS. FUSCO: Who said that's my  
8 position.

9 MR. ALLENTUCH: That's what you told  
10 me.

11 MS. FUSCO: That's what I told you --  
12 no. The statute begins to run under  
13 Turnowski (ph.) when a plaintiff knew or  
14 should have known she had a cause of  
15 action, which includes the fact she has  
16 a -- she can know she's injured and she  
17 can know that an entity such as Stamford  
18 Hospital may be connected to that injury.  
19 But the statute doesn't start to run until  
20 she knows that Stamford Hospital had some  
21 sort of liability.

22 MR. ALLENTUCH: So that's what I'm  
23 trying to inquire about. You placed  
24 her -- you placed her --

25 MS. FUSCO: It's when she came to

1 know, not when Attorney Wells knew.

2 MR. ALLENTUCH: That's why I'm asking  
3 her about these conversation. You can't  
4 use the privilege as a sword and a shield.

5 MS. FUSCO: I'm not using the  
6 privilege as a sword and a shield. You're  
7 putting the cart before the horse.

8 MR. ALLENTUCH: I want to ask her the  
9 question and we can get it on the record.  
10 I can claim then and we can brief it and  
11 argue it before the Court.

12 MS. FUSCO: My point is there may not  
13 be a privilege here. I don't know what  
14 you want to ask her. If you're going to  
15 ask her what did you discuss with Attorney  
16 Wells, I can't let her answer.

17 MR. ALLENTUCH: Yeah. Yeah, instruct  
18 her not to answer.

19 MS. FUSCO: She may have an answer  
20 outside of attorney/client privilege is  
21 what I'm saying. If you would like to  
22 start with that question, then that would  
23 resolve all these problems.

24 MR. ALLENTUCH: But -- okay. That's  
25 fine. I can do that. I'm sorry. Your

1 view is that the statute starts running  
2 when she knows -- when -- I apologize.  
3 We're talking about you in the third  
4 person. I know you're right here -- when  
5 Ms. Sherwood has a claim.

6 MS. FUSCO: Yeah. Under Turnowski  
7 when it's a cause of action when it's an  
8 actionable damage.

9 MR. ALLENTUCH: When she knows she  
10 has a cause of action?

11 MS. FUSCO: Correct.

12 MR. ALLENTUCH: I will ask her that.  
13 We'll start with that then.

14 BY MR. ALLENTUCH:

15 Q Ms. Sherwood, when did you  
16 discover -- first discover that you had a cause  
17 of action against Stamford Hospital in this case?

18 A I guess sometime in late 2014.

19 Q Okay. What led you -- what led you  
20 to that conclusion?

21 THE WITNESS: I'm supposed to answer,  
22 right?

23 MS. FUSCO: If you can.

24 THE WITNESS: I'm not covering  
25 anything up. I was asked to possibly be

1 interviewed as a witness to talk about my  
2 experience with Dr. Hines and Prolift.

3 BY MR. ALLENTUCH:

4 Q Was this for the Feral litigation?

5 A Yes.

6 Q And the person who asked you was  
7 Mr. Wells; is that right?

8 A Yes.

9 Q What did Mr. Wells tell you about  
10 your potential claim against Stamford Hospital?

11 A At that time, nothing.

12 Q At that time, nothing?

13 A At that time, nothing.

14 Q When you had that conversation you  
15 didn't learn you had a cause of action?

16 A No. I said, let me think about it.  
17 And then I said, you know, poor thing. I will,  
18 you know. I will be a witness. I can tell my  
19 story or what I know.

20 MS. FUSCO: Wait. You're talking  
21 about being a witness?

22 THE WITNESS: Yes.

23 MS. FUSCO: That's not the cause of  
24 action. That's where I think there's  
25 confusion.

1                   MR. ALLENTUCH: I understand. We're  
2                   working through it.

3                   THE WITNESS: There was an evolution.  
4                   There was an evolution.

5           BY MR. ALLENTUCH:

6                   Q       So you agreed to be a witness?

7                   A       I agreed to be interviewed to be a  
8                   witness.

9                   Q       And did Mr. Leydon or Ms. Fusco  
10                  interview you to be a witness in the Feral  
11                  litigation?

12                  A       Yes.

13                  Q       What did they tell you?

14                           MS. FUSCO: Oh, wait. Hang on.

15                           Okay. You can answer.

16                  THE WITNESS: They just interviewed  
17                  me to see what my experience had been.

18           BY MR. ALLENTUCH:

19                  Q       Okay. And did they tell you in that  
20                  conversation that you had a potential claim  
21                  against Stamford Hospital?

22                  A       Not then.

23                  Q       Okay. When did you learn that you  
24                  had a potential claim against Stamford Hospital?

25                  A       I don't know exactly, but it was at

1       some point after the interview.

2               Q       What led you -- how did you come to  
3       learn you had a claim against Stamford Hospital?

4               A       Well, I began to understand the case  
5       and I -- well, I hate to talk about Mr. Wells  
6       when he's not here. I asked him if I had done  
7       the right thing to file this suit far away, you  
8       know, with the MDL because what was happening,  
9       you know, my experience was quite different and I  
10      didn't know that there was a local option.

11              Q       And what did he tell you?

12              A       I don't think he told me anything at  
13      that time. We just chatted about it.

14              Q       All right. And just so we're clear,  
15      you sued Ethicon in products liability in West  
16      Virginia in April of 2013; is that right?  
17      Approximately.

18              A       Yeah, maybe. I can't remember.

19              Q       Okay. All right.

20              A       It's a lot easier for me to remember  
21      the medical details.

22              Q       I understand.

23              A       Yeah, because they impacted me  
24      physically.

25              Q       I understand.



1                   So I'm trying to understand what  
2 specifically happened -- withdrawn.

3                   You said you're talking -- you  
4 testified about learning about the details of the  
5 case a minute ago. Were you referring to the  
6 Feral case?

7                   A       I got information whenever I was  
8 being interviewed as a witness about what was  
9 going on.

10                  Q       What was going on in the Feral case?

11                  A       Yes.

12                  Q       And so what -- when -- what  
13 specifically happened that led you to conclude  
14 you had a potential claim against Stamford  
15 Hospital in products liability?

16                  A       Well I think I asked a question that,  
17 you know, why had I not thought of that or why  
18 did I not know that was possible. It was a whole  
19 different thing, you know, having a local lawsuit  
20 and seeing the lawyers who are representing me.  
21 I was not very satisfied with filling out papers  
22 and never hearing from the firm.

23                  Q       And I --

24                  A       And I actually just thought I was  
25 really forgotten.

1                   Q       So -- I'm sorry. Was this --  
2       withdrawn.

3                               Did someone tell you that you had a  
4       potential claim against Stamford Hospital?

5                   A       I'm here. I guess. But I think I  
6       asked questions.

7                   Q       So who --

8                   A       I don't --

9                   Q       I'm trying to be very concrete. I'm  
10       looking for a concrete event and a concrete time.  
11       That's why I'm asking five different ways. I can  
12       keep doing that, but that's what I'm trying to  
13       figure out.

14                               Did -- who told you you had a  
15       potential claim against Stamford Hospital in  
16       products liability in this case?

17                   A       I think I would have to ask Attorney  
18       Wells.

19                   Q       You don't --

20                   A       If he has that conversation on  
21       record. I feel a little weird without him here.

22                               MS. FUSCO: It sounds like she  
23       doesn't want to waive attorney/client  
24       privilege.

25

1 BY MR. ALLENTUCH:

2 Q Let me ask you that. It's your  
3 privilege. It belongs to you, the  
4 attorney/client privilege. Are you asserting the  
5 privilege with regard to communications with  
6 Attorney Wells about this issue?

7 A I don't want to give you a wrong  
8 date. I don't know the date so I will be honest  
9 and straightforward. I can only tell you that  
10 sometime after I came and was interviewed as a  
11 witness, and before the claim was filed, that I  
12 can't recall exactly who I talked to and I can't  
13 remember the date.

14 Q Do you remember approximately when it  
15 was?

16 A Well, I can't remember exactly when I  
17 was interviewed here as a witness, but it was a  
18 couple of months after that, I think.

19 Q So would that have been in 2015?

20 A My answer is a guess.

21 Q Can you bracket it at all in time?

22 A I think I did. Somewhere between  
23 when I came here to be interviewed to be a  
24 witness, and I was going to be a witness for Mary  
25 Feral in 2015. Or was it '16? I don't know.

1           Q     I will tell you that the trial in  
2           that case was supposed to occur in January 16.

3           MS. FUSCO: I think the relevant  
4           issue was when was the complaint initially  
5           filed. If she knew that date, it would  
6           help her in time frame. So I think in  
7           fairness, Simon -- you know what I'm  
8           saying?

9           MR. ALLENTUCH: I'm happy to look  
10          that up --

11          MS. FUSCO: I can tell you what it  
12          was. The return date was September 16,  
13          2014. We filed it on or about August 13,  
14          2014. So I don't know if that refreshes  
15          your recollection.

16       BY MR. ALLENTUCH:

17          Q     Does that help you?

18                 I think what she's saying is it was  
19          around August of 2014. Is that when the  
20          complaint was initiated?

21          A     I don't know. I mean, I think so,  
22          because if I -- I'm also thinking about having  
23          had an enormous surgery in June of 2014. Did I  
24          come here after that?

25                 I wasn't very mobile.

1                   Q       So let me backup.

2                            I understand you don't know the  
3       timing --

4                   A       I kind of know the timing. I just  
5       don't know the exact timing.

6                   Q       All right. Was it -- I know Attorney  
7       Fusco suggested it was sometime shortly before  
8       the complaint was filed. I didn't hear that  
9       testimony from you before, but is that -- is that  
10      the timing?

11                  A       I believe that I talked to Attorney  
12      Wells sometime in June of 2014 and he inquired  
13      about my health and that he wondered -- he knew  
14      about a case and they were talking about it  
15      somewhere and he knew me, and he said, would you  
16      be willing to be a witness. And I agreed to  
17      that.

18                            So maybe I came in July 2014. I'm  
19      not sure. I could have come in June, so I'm very  
20      much guessing. But it was after the surgery in  
21      2014 that he and I talked about me being a  
22      witness.

23                  Q       All right. Did he tell you that you  
24      had a potential claim against Stamford Hospital?

25                  A       I think I might have asked him

1       because I was surprised when I was listening to  
2       the briefing about what this claim was to say,  
3       you know, did I make the right claim.

4               Q       All right. So did you ask him if you  
5       had a potential claim against Stamford Hospital?

6               A       That's my best recollection.

7               Q       And what did he tell you?

8               A       I think he made a call and got back  
9       to me later.

10              Q       And what did he tell you when he got  
11       back to you?

12              A       I think he told me that I did.

13              Q       And that was sometime in the summer  
14       of 2014?

15              A       To my best recollection.

16              Q       Why didn't you testify in the Feral  
17       case?

18              A       I agreed to, but I think that I was  
19       not called on.

20              Q       Okay. Let's go back to UCLA.

21                      MS. FUSCO: I don't know if you're  
22       starting a whole new topic.

23                      MR. ALLENTUCH: I was starting where  
24       I left off.

25                      MS. FUSCO: So I don't know if you

1           have a lot or are starting a new topic.

2           MR. ALLENTUCH: I'm -- we can stop,  
3           but I probably have, you know, at least 90  
4           minutes two hours left.

5           MS. FUSCO: We're not going past  
6           5:00. We can't.

7           MR. ALLENTUCH: Do you want to go  
8           another five minutes then?

9           MS. FUSCO: Is that okay with you?

10          THE WITNESS: Well, yes, there's a  
11          big different between 5:00 and 90.

12          MR. ALLENTUCH: Right. We just have  
13          to --

14          MS. FUSCO: And it's unfair to Madam  
15          Court Reporter as well.

16          I don't know if you wanted to take a  
17          break here. It seemed like a natural  
18          break.

19          MR. ALLENTUCH: Look. I can go for  
20          another five minutes and then obviously I  
21          need to, from my perspective, either  
22          continue for about 90 minutes another day.  
23          But we don't need the last five minutes.

24          MS. GOODSTEIN: Because I will have  
25          questions as well.

1 MR. ALLENTUCH: We'll suspend for the  
2 day. Is there another date that --

3 MS. FUSCO: Well, I will get back to  
4 you on that because I want to know how  
5 much time you guys need. All right. And  
6 we can't go on and on about irrelevant  
7 unnecessary stuff like talking about Isaac  
8 Newton.

9 MR. ALLENTUCH: It was Louis Pasteur,  
10 but I got it.

11 MS. FUSCO: That one too. That was  
12 the one I was forgetting. You talked  
13 about the laws of physics, which had  
14 nothing to do.

15 I'm not going to let you do it,  
16 Simon. It's a waste of time. We sat here  
17 all day since 10:00. Okay.

18 MR. ALLENTUCH: All right. All  
19 right, Jackie. You do whatever you need  
20 to do.

21 MS. FUSCO: Exactly.

22 MR. ALLENTUCH: All right.

23 MS. FUSCO: Because we didn't take  
24 this long on LeMay (ph.).

25 MR. ALLENTUCH: LeMay was two days.



1           The first day was 300 pages.

2           MS. FUSCO: Look at the time. We  
3 finished early the first time.

4           MR. ALLENTUCH: I don't want to  
5 argue.

6           MS. GOODSTEIN: It went until  
7 4:00 the next day and then it went for  
8 another two hours.

9           MS. FUSCO: Not even. It was very  
10 short the second day, but that was three  
11 hours.

12          MS. GOODSTEIN: You know, I have been  
13 sitting here and everything was relevant  
14 to the case. Maybe there was a 30-second  
15 discussion --

16          MS. FUSCO: Tell me, how is Louis  
17 Pasteur and Sir Isaac Newton --

18          MS. GOODSTEIN: As I just said, maybe  
19 there was 30 seconds that perhaps wasn't  
20 relevant, but we didn't spend a lot of  
21 time talking about it.

22          MS. FUSCO: The point is, if you can  
23 let me know how much time you need, I will  
24 see if we can do that.

25          MR. ALLENTUCH: Thank you.

1 MS. GOODSTEIN: All right. So the  
2 deposition is continued. We can go off  
3 for today.

4 MR. ALLENTUCH: Thank you.

5 MS. FUSCO: Continued with a  
6 contingent with a reasonable amount of  
7 additional time required.

8 (Attorney Allentuch retained  
9 Exhibit 1.)

10 (TIME CONCLUDED: 5:00 p.m.)

11 \* \* \* \* \*

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C E R T I F I C A T E

STATE OF CONNECTICUT )

) ss.:

COUNTY OF FAIRFIELD )

I, MERCEDES MARNEY, Court Reporter and Notary  
Public within and for the state of Connecticut, do  
hereby certify:

That ROBIN SHERWOOD, the witness whose  
deposition is hereinbefore set forth, was duly sworn  
by me, and that such deposition is a true record of  
the testimony given by the witness.

I further certify that I am not related to any  
of the parties to this action by blood or marriage,  
and that I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have here unto set my  
hand this 20th day of September, 2016.

---

Mercedes Marney - Shorthand Reporter  
Notary Public - State of Connecticut  
Account Number: 167303  
Date Appointed: 08/07/2014  
Expiration Date: 08/31/2019

1 ROBIN SHERWOOD and GREG HOELSCHER

2 v.

3 STAMFORD HEALTH SYSTEM, INC., et al.

4 DECLARATION UNDER PENALTY OF PERJURY

5 I declare under penalty of perjury  
6 that I have read the entire transcript of  
7 my Deposition taken in the captioned matter  
8 or the same has been read to me, and  
9 the same is true and accurate, save and  
10 except for changes and/or corrections, if  
11 any, as indicated by me on the DEPOSITION  
12 ERRATA SHEET hereof, with the understanding  
13 that I offer these changes as if still under  
14 oath.

15

16

17 \_\_\_\_\_  
ROBIN SHERWOOD

18

19

20 Subscribed and sworn to before me on  
21 the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

22

23

24 Notary Public,  
in and for the state of \_\_\_\_\_

25

My Commission Expires: \_\_\_\_\_

## 1 ----- I N D E X -----

2 WITNESS EXAMINATION BY PAGE

3 ROBIN SHERWOOD

4 Direct - Mr. Allentuch 5

5

## 6 ----- INFORMATION REQUEST -----

7 INSTRUCTION: PAGE LINE

8 NOT TO ANSWER BY: Ms. Fusco 30 23

NOT TO ANSWER BY: Ms. Fusco 31 19

9 NOT TO ANSWER BY: Ms. Fusco 32 18

NOT TO ANSWER BY: Ms. Fusco 33 1

10 NOT TO ANSWER BY: Ms. Fusco 40 1

NOT TO ANSWER BY: Ms. Fusco 174 9

11 NOT TO ANSWER BY: Ms. Fusco 187 24

12 RULINGS: (None)

13 TO BE FURNISHED: (None)

14 REQUESTS: (None)

15 MOTIONS: (None)

16

## ----- E X H I B I T S -----

17

18 EXHIBIT 1 Amended Complaint 37

19

20

21

22

23

24

25

## DEPOSITION ERRATA SHEET

1

2

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

3

4

Reason for change: \_\_\_\_\_

5

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

6

7

Reason for change: \_\_\_\_\_

8

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

9

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Reason for change: \_\_\_\_\_

11

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Reason for change: \_\_\_\_\_

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Reason for change: \_\_\_\_\_

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Reason for change: \_\_\_\_\_

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22

Reason for change: \_\_\_\_\_

23

24

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

25

ROBIN SHERWOOD

# Exhibit 2



The Regional  
Center  
for Health

Affiliate Columbia University College of Physicians & Surgeons  
Member New York Presbyterian Healthcare System  
A Planetree Hospital

[Patient Addressograph]

# HISTORY

Sherwood

Date: 1/13/06

Time:

Chief Complaint / Dx:

HPI:

49 yo A4 & oligomenorrhea & menarche at  
12 years old E POP + 7 years of pregnancy

Un孕 - + Ery - G-7 Mart

SCZ - + Hg - rare Pader &

Incomplete daily menstruation Hb - trace Bst - 6

Conjugal occas recent menst - 6 days

PMH/PSH:

Sex - + followed by prolapse

OB/G - 4 times

Cyber - 6 weeks of 1st pregnancy - 12 kg  
Gib. malnutrition

Meds:

Amid - Mignone, ANAID Do - 1 per

PSH - &

Medic - Xyrem (sleep), Boster q 3 months

Hydroxyzine for Hb rash

Allergies: ☐ NKDA

SU - & TORIC

SH:

Tobacco ☐ no ☐ yes

ETOH ☐ no ☐ yes

Ally - 1 per day

FH:





The Regional  
Center  
for Health

Albany College of Physicians & Surgeons  
Member New York Presbyterian Healthcare System  
A Planetree Hospital

[Patient Addressograph]

SYSTEM/BODY AREA		DETAILS	
<input type="checkbox"/> Skin			
<input type="checkbox"/> Inspection	<input type="checkbox"/> no rash		
<input type="checkbox"/> Palpation	<input type="checkbox"/> wnl		
<b>Chest/Breast</b>			
<input type="checkbox"/> Inspection	<input type="checkbox"/> symmetric		
<input type="checkbox"/> Palpation	<input type="checkbox"/> no masses		
<b>Genitourinary</b>			
<b>Female:</b>		<b>Male:</b>	
<input type="checkbox"/> External genitalia		<input type="checkbox"/> Scrotal contents	<input type="checkbox"/> no testicular masses
<input type="checkbox"/> Urethral exam		<input type="checkbox"/> Penile exam	<input type="checkbox"/> wnl
<input type="checkbox"/> Bladder exam		<input type="checkbox"/> Digital rectal exam	<input type="checkbox"/> normal prostate
<input type="checkbox"/> Cervix			
<input type="checkbox"/> Uterus			
<input type="checkbox"/> Adnexa/Parametria			

Level of Physical Exam: Problem Focused = 1-5 elements/ 1 organ system  
Expanded Problem Focused = ≥5 elements/ 1 organ system  
Detailed = 2 elements/ ≥5 organ systems  
Comprehensive = ≥2 elements/ 9 organ systems

Labs:

ACR 20

1/0/13  
4/2/10  
0/0/2

elo-gated cervix  
E. Nosp  
ST

Impression and Plan:

voided 200cc Nystene

At c. mid SCT & female not  
w/ a Nosp  
Revised total A-100  
for 1-1  
to see A-100 to next (10)

MD Signature

SHERWOODR\_SHIP\_MDR000044



**STAMFORD  
HOSPITAL**

The Regional  
Center  
for Health

Affiliate Columbia University-College of Physicians & Surgeons  
Member NewYork-Presbyterian Healthcare System  
A Planetree Hospital

**Brian J. Hines, M.D.**  
Director, Division of Urogynecology and Pelvic Reconstruction Surgery  
Tel: 203.276.7269 FAX: 203.276.7780

30 Shelburne Road  
P.O. Box 9317  
Stamford CT 06904-9317  
203.276.1000

[www.stamhealth.org](http://www.stamhealth.org)

April 10, 2006

RE: SHERWOOD, ROBIN  
Date of Service: 04/10/2006  
Dear Dr. Komarynsky,

Thank you for the courtesy of referring your Robin Sherwood. As you know, she is a 49-year-old para 4 who presents with pelvic organ prolapse and stress urinary incontinence. She suffers with minor urinary urgency, but denies frequency as well as nocturia. She denies urge-related urinary incontinence. Subjectively, she has a difficult time emptying her bladder. She occasionally has mild constipation and complains of fecal urgency. She is presently sexually active, but is bothered by her prolapse.

Her past history is significant for 4 normal spontaneous vaginal deliveries.

Her past gynecological history is benign.

Her past medical history is significant for migraine headaches, bone spurs, and recently being found to be ANA positive. She has not had any previous surgery. She is presently taking Botox injections for her headaches and Xyrem p.r.n. for sleep. She denies toxic social habits and has an allergy to Topamax.

On physical exam, the vagina appears estrogenized. There is urethral hypermobility. The cervix appears elongated. There is descent of the posterior wall to the level of the introitus. The cervix descends 3-4 cm outside of the introitus. There is apparent kinking of the urethra with descent of the mid portion of the anterior wall to the level of the introitus. The genital hiatus is enlarged. A polyp is visualized extending from the cervical canal. She was able to generate a strong voluntary levator muscle contraction. She voided 200 cc with a postvoid residual of 20 cc. A multichannel urodynamic evaluation was performed. She experienced her first sensation of bladder filling at 120 cc and her first urge to void at 180 cc. A maximal urethral closure pressure with anterior wall repositioning of 70 cm of water was measured. No detrusor instability was evident.

Robin Sherwood suffers with mild stress urinary incontinence evident of urethral kinking and severe pelvic organ prolapse primarily involving the apex. On April 12, 2006 she underwent an anterior Paravaginal repair, transobturator tension free sling and a sacrospinous ligament fixation to her cervix. She is recovering well.

I apologize that you did not receive this letter prior to her surgery.

Best regards,

  
\_\_\_\_\_  
Brian Hines, MD

cc: Inga Tuluca, MD

SHERWOODR\_SHIP\_MDR000045

THE STAMFORD HOSPITAL  
Stamford, Connecticut

*Stamford*

Date

	<del>3800</del>									
4/16/66	1 <sup>st</sup> 120 Age 180 Pneum 5 70 E/I									
	Assessing lung & heart met. R/L will add 207									
4/27/66	2-45 sup Ant R/L H/707 Neckl mpy & S/C F 10 reper C/O small episode of Age met. C/S E (P) Age R/L Neckl Bm									
	<table border="1"> <tr> <td>3</td><td>3</td><td>5</td></tr> <tr> <td>3</td><td>3</td><td>10</td></tr> <tr> <td>3</td><td>3</td><td>10</td></tr> </table> half-cell	3	3	5	3	3	10	3	3	10
3	3	5								
3	3	10								
3	3	10								
	At resident F/L (worth Neckl: reper day well									

731520 (7/00)

DOCTOR'S PROGRESS NOTES HIP\_MDR000041

THE STAMFORD HOSPITAL  
Stamford, Connecticut

Date

Shaw

3/15/68 7:45 a.m. At P.A. / S.S.E. =  
repe. mental exam clear  
calm steady eye at 6:30

PE & A/C  
@ slight yellow = 1/2

Cx chest - Vg  
At Sk = clear  
F/L Lk

//

6/1/68 7:45 a.m. At P.A. / S.S.E. =  
repe. at mental exam  
& clear 6:30 hour mild Lk

PE long cell

3/1/68  
3/1/68  
3/1/68

PE 4 weeks

//

THE STAMFORD HOSPITAL  
Stamford, Connecticut

Date

Sherwood

8/24/66 old left a carum F 2a  
Vg P-1112

PE  $\frac{3}{3} \frac{3}{3} \frac{8}{10}$   
 $\frac{3}{3} \frac{3}{3} \frac{10}{10}$   
 $\frac{2}{2} \frac{2}{2} \frac{10}{10}$

At present  
✓ CLK

10/6/66 At 6 nally up at P-1112/1112  
log cell

PE  $\frac{3}{3} \frac{3}{3} \frac{8}{10}$   
 $\frac{3}{3} \frac{3}{3} \frac{10}{10}$   
 $\frac{2}{2} \frac{2}{2} \frac{10}{10}$

At 6 nally

THE STAMFORD HOSPITAL  
Stamford, Connecticut

Robin  
Sherwood

Date

4/12/67 cl. dyspnea

AE 3/5/68

Essential  
side of pain

Assessed from side in OR  
possible Vg a dominant one  
stroke.

AE (Cohen & Smith) chd,  
refer to Nelson / Bull 2  
joint procedure //

8/13/67 cl. for leg prep for future  
removal.

Assessed possible need to reattach Vg.  
At or considering if the could be reattached  
@ for at leg or out  
C-6 C-7 90 G-150  
PAI need to  
At or Vg

**THE STAMFORD HOSPITAL**  
Stamford, Connecticut

Date

Sherwood

9/12/77	2-1/2 hrs Sp at SSF strike
	had good crop of what are now
	residual
	On 10 hours in the room when
	the well about 1000
	heavy well
	Plu 1/5 urine
	for 2-3 weeks
12/20/77	Plu 1/5 urine
	Sp well at SSF strike
	Plu 1/5 urine
	most @ right side but
	up to 1000
	with blood when SSF strike
	renewed at 1000 - take up to 1000
	renew to 1000

731520 (7/00)

**DOCTOR'S PROGRESS NOTES** SHIP\_MDR000037

**STAMFORD HOSPITAL  
OPERATIVE REPORT****Sherwood, Robin**  
**0001527340 386661**  
**ADMITTED: 04/12/2006**  
**M2N220802****SURGEON: Brian J. Hines, MD****ASSISTANT: Allison Servoss, MD****DATE: 04/12/2006****PREOP DIAGNOSIS: Pelvic organ prolapse and stress urinary incontinence.****POSTOP DIAGNOSIS: Pelvic organ prolapse and stress urinary incontinence.****PROCEDURE: Anterior repair with mesh placement, sacrospinous ligament fixation, placement of transobturator suburethral sling, and repair of rectal laceration.****FINDINGS: There was complete detachment of the apical supports of the vagina. The anterior wall descended past the level of the introitus. There was stress urinary incontinence. There was a low rectocele.****ANESTHESIA: Spinal with sedation.****ESTIMATED BLOOD LOSS: 200 mL.****FLUID REPLACEMENT: 1200 mL LR.****COMPLICATIONS: Rectal laceration repaired in OR.**

**PROCEDURE:** Informed consent was obtained from the patient, who was then brought to the operating room, where a spinal anesthesia was administered without difficulty. She was prepped and draped in the normal sterile fashion and placed in the dorsal lithotomy position with her legs in candy cane stirrups. Careful attention was paid not to overly flex, abduct, or externally rotate the hips. A midline incision was made in the anterior vaginal wall, and the perivesical spaces were developed bilaterally. A Prolene suture was placed through the cervix. A 2-0 Vicryl suture was placed on the undersurface of the anterior vaginal wall. A separate incision was made underneath the urethra. This dissection was extended laterally to the inferior pubic ramus. Incisions were made over the groin areas on both sides over the most superior and medial aspects and over the most dependent aspect. Prolift trocars were introduced through the most dependent incisions and brought out through the arcus tendineus approximately a centimeter ventral to the ischial spine. This was done on both sides. The trocar was removed, and a retrieving wire was advanced through the cannula. This was repeated on the more superior and medial incisions, and this exited the pelvis just under the pubic symphysis. Monarch trocars were then passed through these more superior and medial incisions and exited through the separate incision underneath the mid urethra. A Monarch sling was attached to these instruments and exteriorized. The bladder was inspected with a 70-degree, 17-French cystoscope, and no trauma was identified to the bladder. The sling was adjusted to lie at the level of the mid urethra without tension. This was confirmed by placing a Kelly clamp between the urethra and the sling. The plastic sheaths covering the sling were removed. The sling was cut at the level of the skin, and the vaginal incision under the urethra was closed. An anterior Prolift graft was then attached to the Prolene and Vicryl sutures as well as to the retrieving cords. The ends of the graft were then attached to the retrieving instruments which were exteriorized. The graft was copiously irrigated with bacitracin, and the anterior vaginal wall was closed with 2-0 Vicryl suture in a running locked fashion. A small incision was then made under the posterior lip of the cervix. The perirectal space on the patient's right side was developed. A Miya hook was used to place a #1 60-inch Prolene suture through the sacrospinous ligament. A rectal exam was performed. No trauma was identified to the rectum at this time. The suture was attached to the undersurface of the cervix in 2 places. Three separate sutures of 0 Vicryl were placed and left untied through this incision. A separate incision was then made approximately 3 cm in from the introitus.

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APR 13 2006 10:36

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## OPERATIVE REPORT

Sherwood, Robin  
0001527340 U 386561  
ADMITTED: 04/12/2006  
M2N220802

The spaces bilaterally were developed. It was appreciated that, while passing the right trocar through an incision made lateral and inferior to the anus, the trocar went through the rectum. The trocar was removed. The injury was identified and was closed in 2 layers, the first with 4-0 Vicryl, the second with 3-0 Vicryl. This area was copiously irrigated with bacitracin. The previous dissection through the posterior vaginal wall near the apex was again copiously irrigated with bacitracin. A careful rectal exam confirmed that the defect had been completely repaired. A 2-0 Vicryl suture was used to close the incision near where the rectal injury occurred. No graft was placed. The sacrospinous sutures were tied. The vagina was closed over the sacrospinous sutures. The anterior graft was adjusted to lie without tension. The vagina was packed with 1-inch plain packing. All skin incisions were closed with 4-0 Vicryl suture. The patient tolerated the procedure well. She was brought to the recovery room in stable condition.

---

Brian J. Hines, MD

hsb/

d: 04/12/2006 10:09 A

t: 04/13/2006 8:52 A

j: 001330221/542337

cc:: Brian J. Hines, MD

Allyson Servoss, M.D.

HS Job #: 868725 / 33675 /



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**STAMFORD HOSPITAL  
DISCHARGE SUMMARY**

Sherwood, Robin  
0001527340 386661  
ADMITTED: 04/12/2006  
DISCHARGED: 04/15/2006

**HOSPITAL COURSE:**

The patient was admitted to the hospital on 4/12/2006. Please see separately dictated operative report for complete surgical details. On postoperative day one, the patient was comfortable. She had positive flatus. She was on intravenous antibiotics and she was started on Colace. On postoperative day two, she complained of pain at the coccyx which was similar to pain that she had preoperatively. She was advanced to a regular diet. Her Labs from postoperative day one revealed a white blood cell count of 7.7 and a Hematocrit of 29. On postoperative day three, the patient had a large bowel movement without difficulty and was discharged home in stable condition.

---

Brian J. Hines, MD

jh/BJH

d: 05/08/2006 1:53 P

t: 05/09/2006 9:13 A

j: 001349952/550974

cc: Brian J. Hines, MD



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MAY 09 2006 10:30

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PAGE 04

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Page 1 of 3

Thursday, August 30, 2007 8:33:31 AM

**STAMFORD HOSPITAL  
OPERATIVE REPORT**

Sherwood, Robin  
0006032346 386661  
ADMITTED: 08/29/2007  
ORH

**SURGEON:** Brian J Hines, MD

**ASSISTANT:** Allyson Servoss, MD

**DATE:** 8-29-07

**PREOP DIAGNOSIS:** Exposed vaginal mesh material.

**POSTOP DIAGNOSIS:** Exposed previously placed sacrospinous ligament sutured at the vaginal apex.

**FINDINGS:** There were 2 sacrospinous sutures each were approximately 2 cm in length that were protruding through the vaginal apex.

**ANESTHESIA:** General anesthesia.

**ESTIMATED BLOOD LOSS:** Minimal.

**FLUID REPLACEMENT:** 300 mL LR.

**COMPLICATIONS:** None.

**CONDITION:** Stable.

**PROCEDURE:** After informed consent was obtained from the patient, she was brought to the operating room where general anesthesia was administered without difficulty. She was prepped and draped in the normal sterile fashion and placed in the dorsal lithotomy position with her legs in candy-cane stirrups. Careful attention was paid not to overly flex, abduct, or externally rotate the hips. Breisky retractors were placed in the vagina. Two sutures, each of approximately 2 cm in length, were exposed in the vaginal apex. These were trimmed. One was definitively trimmed below the knot. The other one was trimmed near the knot. The vaginal opening was closed with a 2-0 Vicryl suture. A rectal exam was performed confirming no trauma to the rectum. The apex was evaluated for support and was determined to be well supported still to the sacrospinous ligament. Therefore, a repeat vault suspension procedure was not performed. The patient tolerated the procedure well.

  
\_\_\_\_\_  
Brian J. Hines, MD

hsb/

d: 08/29/2007 9:45 A

t: 08/30/2007 5:06 A

j: 001705727/708589

cc:: Brian J. Hines, MD  
Allyson Servoss, M.D.

**HS Job #:** 637135 / 31764 / 36274

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